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The Student's Constitutional History of England.

THE

CONSTITUTIONAL

HISTORY OF ENGLAND,

FROM THE ACCESSION OF HENRY VII. TO
THE DEATH OF GEORGE II.

By HENRY HALLAM, LL.D., F.R.A.S.

INCORPORATING THE AUTHOR'S LATEST ADDITIONS AND CORRECTIONS,
AND ADAPTED TO THE USE OF STUDENTS.

By WILLIAM SMITH, D.C.L., LL.D.

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PREFACE.

THE present Edition of the "Constitutional History of England" has been undertaken for the same reasons and executed on the same plan as are explained in the Preface to the corresponding edition of the "History of the Middle Ages." It has been brought into one volume by leaving out most of the notes at the foot of the pages, and by abbreviating some of the less important remarks; but the great bulk of the book remains unchanged, and nothing of importance has been omitted. The editor has not considered himself at liberty to alter any of the opinions expressed by the Author, even where he differs from them; and it has been his aim to present the work as nearly as possible in the form in which he conceives the author would have wished it to appear if he had himself prepared an edition for the special use of students. It has been thought advisable to print at length the Petition of Right and the Bill of Rights, of which Mr. Hallam gave only an abstract.

WM. SMITH.

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THE STUDENT'S

CONSTITUTIONAL HISTORY OF ENGLAND.

CHAPTER I.

ON THE ENGLISH CONSTITUTION FROM HENRY VII. TO MARY.

§ 1. Ancient Government of England. § 2. Limitations of Royal Authority. § 3. Difference in the effective Operation of these. § 4. Sketch of the state of Society and Law. § 5. Henry VII. § 6. Statute for the Security of the Subject under a King *de facto*. § 7. Exactions of Money under Henry VII. § 8. Taxes demanded by Henry VIII. Illegal Exactions of Wolsey in 1523 and 1525. § 9. Acts of Parliament releasing the King from his Debts. § 10. A Benevolence again exacted. Oppressive Treatment of Reed. § 11. Severe and unjust Executions for Treason. Earl of Warwick. Earl of Suffolk. Duke of Buckingham. § 12. New Treasons created by Statute. Executions of Fisher and More. § 13. Cromwell. § 14. Duke of Norfolk. § 15. Anne Boleyn. § 16. Act giving Proclamations the force of Law. § 17. Character of Henry VIII. § 18. Government of Edward VI.'s Councilors. Attainder of Lord Seymour and Duke of Somerset. § 19. Violence of Mary's Reign. § 20. The House of Commons recovers part of its independent power in these two Reigns. § 21. Attempt of the Court to strengthen itself by creating new Boroughs. § 22. Causes of the High Prerogative of the Tudors. § 23. Jurisdiction of the Council of Star-Chamber. § 24. This not the same with the Court erected by Henry VII. § 25. Influence of the Authority of the Star-Chamber in enhancing the Royal Power. Tendency of Religious Disputes to the same end.

§ 1. The government of England, in all times recorded by history, has been one of those mixed or limited monarchies which the Celtic and Gothic tribes appear universally to have established in preference to the coarse despotism of eastern nations, to the more artificial tyranny of Rome and Constantinople, or to the various models of republican polity which were tried upon the coasts of the Mediterranean Sea. It bore the same general features, it belonged, as it were, to the same family, as the governments of almost every European state, though less resembling, perhaps, that of France than any other. But, in the course of many centuries, the boundaries which determined the sovereign's prerogative and the people's liberty or power having seldom been very accurately defined by law, or at least by such law as was deemed fundamental and unchangeable, the forms and prin-

ciples of political regimen in these different nations became more divergent from each other, according to their peculiar dispositions, the revolutions they underwent, or the influence of personal character. England, more fortunate than the rest, had acquired in the fifteenth century a just reputation for the goodness of her laws and the security of her citizens from oppression.

This liberty had been the slow fruit of ages, still waiting a happier season for its perfect ripeness, but already giving proof of the vigor and industry which had been employed in its culture. I have endeavored, in a work of which this may in a certain degree be reckoned a continuation, to trace the leading events and causes of its progress. It will be sufficient in this place briefly to point out the principal circumstances in the polity of England at the accession of Henry VII.

§ 2. The essential checks upon the royal authority were five in number.—1. The king could levy no sort of new tax upon his people, except by the grant of his parliament, consisting as well of bishops and mitred abbots or lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house. 2. The previous assent and authority of the same assembly were necessary for every new law, whether of a general or temporary nature. 3. No man could be committed to prison but by a legal warrant specifying his offense; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of jail-delivery. 4. The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offense was alleged to have occurred, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision. 5. The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in an action for damages to be assessed by a jury, or, in some cases, were liable to criminal process; nor could they plead any warrant or command in their justification, not even the direct order of the king.

§ 3. These securities, though it would be easy to prove that they were all recognized in law, differed much in the degree of their effective operation. It may be said of the

first, that it was now completely established. After a long contention, the kings of England had desisted for near a hundred years from every attempt to impose taxes without consent of parliament; and their recent device of demanding benevolences, or half-compulsory gifts, though very oppressive, and on that account just abolished by an act of the late usurper Richard, was in effect a recognition of the general principle, which it sought to elude rather than transgress.

The necessary concurrence of the two houses of parliament in legislation, though it could not be more unequivocally established than the former, had in earlier times been more free from all attempt at encroachment. We know not of any laws that were ever enacted by our kings without the assent and advice of their great council; though it is justly doubted whether the representatives of the ordinary freeholders, or of the boroughs, had seats and suffrages in that assembly during seven or eight reigns after the conquest. They were then, however, ingrafted upon it with plenary legislative authority; and if the sanction of a statute were required for this fundamental axiom, we might refer to one in the 15th of Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."[1]

It may not be impertinent to remark in this place, that the opinion of such as have fancied the royal prerogative under the houses of Plantagenet and Tudor to have had no effectual or unquestioned limitations is decidedly refuted by the notorious fact that no alteration in the general laws of the realm was ever made, or attempted to be made, without the consent of parliament. It is not surprising that the council, in great exigency of money, should sometimes employ force to extort it from the merchants, or that servile lawyers should be found to vindicate these encroachments of power. Impositions, like other arbitrary measures, were particular and temporary, prompted by rapacity, and endured through compulsion. But if the kings of England had been supposed to enjoy an absolute authority, we should find some proofs

[1] Nothing can be more evident than that this statute not only establishes by a legislative declaration the present constitution of parliament, but recognizes it as already standing upon a custom of some length of time.

of it in their exercise of the supreme function of sovereignty the enactment of new laws. Yet there is not a single instance, from the first dawn of our constitutional history, where a proclamation, or order of council, has dictated any change, however trifling, in the code of private rights, or in the penalties of criminal offenses. Was it ever pretended that the king could empower his subjects to devise their freeholds, or to levy fines of their entailed lands? Has even the slightest regulation, as to judicial procedure, or any permanent prohibition, even in fiscal law, been ever enforced without statute? There was, indeed, a period, later than that of Henry VII., when a control over the subject's free right of doing all things not unlawful was usurped by means of proclamations. These, however, were always temporary, and did not affect to alter the established law. But though it would be difficult to assert that none of this kind had ever been issued in rude and irregular times, I have not observed any under the kings of the Plantagenet name which evidently transgress the boundaries of their legal prerogative.

The general privileges of the nation were far more secure than those of private men. Great violence was often used by the various officers of the crown, for which no adequate redress could be procured; the courts of justice were not strong enough, whatever might be their temper, to chastise such aggressions; juries, through intimidation or ignorance, returned such verdicts as were desired by the crown; and, in general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws.

§ 4. The peers alone, a small body, varying from about fifty to eighty persons, enjoyed the privileges of aristocracy; which, except that of sitting in parliament, were not very considerable, far less oppressive. All below them, even their children, were commoners, and in the eye of the law equal to each other. In the gradation of ranks, which, if not legally recognized, must still subsist through the necessary inequalities of birth and wealth, we find the gentry or principal land-holders, many of them distinguished by knighthood, and all by bearing coat armor, but without any exclusive privilege; the yeomanry, or small freeholders and farmers, a very numerous and respectable body, some occupying their own estates, some those of landlords; the burgesses and inferior inhabitants of trading towns; and, lastly, the peasantry and laborers. Of these, in earlier times, a considerable

part, though not perhaps so very large a proportion as is usually taken for granted, had been in the ignominious state of villanage, incapable of possessing property but at the will of their lords. They had, however, gradually been raised above this servitude; many had acquired a stable possession of lands under the name of copy-holders; and the condition of mere villanage was become rare.

The three courts at Westminster—the King's Bench, Common Pleas, and Exchequer—consisting each of four or five judges, administered justice to the whole kingdom; the first having an appellant jurisdiction over the second, and the third being in a great measure confined to causes affecting the crown's property. But as all suits relating to land, as well as most others, and all criminal indictments, could only be determined, so far as they depended upon oral evidence, by a jury of the county, it was necessary that justices of assize and jail-delivery, being in general the judges of the courts at Westminster, should travel into each county, commonly twice a year, in order to try issues of fact, so called in distinction from issues of law, where the suitors, admitting all essential facts, disputed the rule applicable to them. By this device, which is as ancient as the reign of Henry II., the fundamental privilege of trial by jury, and the convenience of private suitors, as well as accused persons, were made consistent with an uniform jurisprudence; and though the reference of every legal question, however insignificant, to the courts above must have been inconvenient and expensive in a still greater degree than at present, it had, doubtless, a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity. The minor tribunals of each county, hundred, and manor, respectable for their antiquity and for their effect in preserving a sense of freedom and justice, had in a great measure, though not probably so much as in modern times, gone into disuse. In a few counties there still remained a palatine jurisdiction, exclusive of the king's courts; but in these the common rules of law and the mode of trial by jury were preserved. Justices of the peace, appointed out of the gentlemen of each county, inquired into criminal charges, committed offenders to prison, and tried them at their quarterly sessions, according to the same forms as the judges of jail-delivery. The chartered

towns had their separate jurisdiction under the municipal magistracy.

The laws against theft were severe, and capital punishments unsparingly inflicted. Yet they had little effect in repressing acts of violence, to which a rude and licentious state of manners, and very imperfect dispositions for preserving the public peace, naturally gave rise. These were frequently perpetrated or instigated by men of superior wealth and power, above the control of the mere officers of justice. Meanwhile the kingdom was increasing in opulence; the English merchants possessed a large share of the trade of the north; and a woolen manufacture, established in different parts of the kingdom, had not only enabled the legislature to restrain the import of cloths, but had begun to supply foreign nations. The population may probably be reckoned, without any material error, at somewhat above three millions, but by no means distributed in the same proportions as at present; the northern counties, especially Lancashire and Cumberland, being very ill peopled, and the inhabitants of London and Westminster not exceeding sixty or seventy thousand.

§ 5. Such was the political condition of England when Henry Tudor, the only living representative of the house of Lancaster, though incapable, by reason of the illegitimacy of the ancestor who connected him with it, of asserting a just right of inheritance, became master of the throne by the defeat and death of his competitor at Bosworth, and by the general submission of the kingdom. He assumed the royal title immediately after his victory, and summoned a parliament to recognize or sanction his possession. The circumstances were by no means such as to offer an auspicious presage for the future. A subdued party had risen from the ground, incensed by proscription and elated by success; the late battle had in effect been a contest between one usurper and another; and England had little better prospect than a renewal of that desperate and interminable contention which pretenses of hereditary right have so often entailed upon nations.

A parliament called by a conqueror might be presumed to be itself conquered. Yet this assembly did not display so servile a temper, or so much of the Lancastrian spirit as might be expected. It was "ordained and enacted by the assent of the lords, and at the request of the commons, that the inheritance of the crowns of England and France, and all dominions appertaining to them, should remain in Henry

VII. and the heirs of his body forever, and in none other." Words studiously ambiguous, which, while they avoid the assertion of an hereditary right that the public voice repelled, were meant to create a parliamentary title, before which the pretensions of lineal descent were to give way. They seem to make Henry the stock of a new dynasty. But, lest the spectre of indefeasible right should stand once more in arms on the tomb of the house of York, the two houses of parliament showed an earnest desire for the king's marriage with the daughter of Edward IV., who, if she should bear only the name of royalty, might transmit an undisputed inheritance of its prerogatives to her posterity.

§ 6. This marriage, and the king's great vigilance in guarding his crown, caused his reign to pass with considerable reputation, though not without disturbance. He had to learn, by the extraordinary though transient success of two impostors, that his subjects were still strongly infected with the prejudice which had once overthrown the family he claimed to represent. Nor could those who served him be exempt from apprehensions of a change of dynasty, which might convert them into attainted rebels. The state of the nobles and gentry had been intolerable during the alternate proscriptions of Henry VI. and Edward IV. Such apprehensions led to a very important statute in the eleventh year of this king's reign, intended, as far as law could furnish a prospective security against the violence and vengeance of factions, to place the civil duty of allegiance on a just and reasonable foundation, and indirectly to cut away the distinction between governments *de jure* and *de facto*. It enacts, after reciting that subjects by reason of their allegiance are bound to serve their prince for the time being against every rebellion and power raised against him, that "no person attending upon the king and sovereign lord of this land for the time being, and doing him true and faithful service, shall be convicted of high treason, by act of parliament or other process of law, nor suffer any forfeiture or punishment; but that every act made contrary to this statute should be void and of no effect."[2] The endeavor to bind future parliaments was of course nugatory; but the statute remains an unquestionable authority for the constitutional maxim that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance of those who may pretend to a better right. It was much re-

[2] Stat. 11 H. 7, c. 1.

sorted to in argument at the time of the revolution and in the subsequent period.

It has been usual to speak of this reign as if it formed a great epoch in our constitution; the king having by his politic measures broken the power of the barons who had hitherto withstood the prerogative, while the commons had not yet risen from the humble station which they were supposed to have occupied. I doubt, however, whether the change was quite so precisely referable to the time of Henry VII., and whether his policy has not been somewhat overrated. In certain respects his reign is undoubtedly an era in our history. It began in revolution and a change in the line of descent. It nearly coincides, which is more material, with the commencement of what is termed modern history, as distinguished from the middle ages, and with the memorable events that have led us to make that leading distinction, especially the consolidation of the great European monarchies, among which England took a conspicuous station. But, relatively to the main subject of our inquiry, it is not evident that Henry VII. carried the authority of the crown much beyond the point at which Edward IV. had left it. The strength of the nobility had been grievously impaired by the bloodshed of the civil wars, and the attainders that followed them. From this cause, or from the general intimidation, we find, as I have observed in another work, that no laws favorable to public liberty, or remedial with respect to the aggressions of power, were enacted, or (so far as appears) even proposed in parliament, during the reign of Edward IV.; the first, since that of John, to which such a remark can be applied. The commons, who had not always been so humble and abject as smatterers in history are apt to fancy, were by this time much degenerated from the spirit they had displayed under Edward III. and Richard II. Thus the founder of the line of Tudor came, not certainly to an absolute, but a vigorous prerogative, which his cautious, dissembling temper and close attention to business were well calculated to extend.

The laws of Henry VII. have been highly praised by Lord Bacon as "deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the estate of his people still more and more happy, after the manner of the legislators in ancient and heroical times." But when we consider how very few kings or statesmen have displayed this prospective wisdom and benevolence in legislation, we may hesitate a little

to bestow so rare a praise upon Henry. Like the laws of all other times, his statutes seem to have had no further aim than to remove some immediate mischief, or to promote some particular end. One, however, has been much celebrated as an instance of his sagacious policy and as the principal cause of exalting the royal authority upon the ruins of the aristocracy; I mean the statute of Fines (as one passed in the fourth year of his reign is commonly called), which is supposed to have given the power of alienating entailed lands.[3]

§ 7. The two first of the Tudors rarely experienced opposition but when they endeavored to levy money. Taxation, in the eyes of their subjects, was so far from being no tyranny, that it seemed the only species worth a complaint. Henry VII. obtained from his first parliament a grant of tonnage and poundage during life, according to several precedents of former reigns. But when general subsidies were granted, the same people, who would have seen an innocent man led to prison or the scaffold with little attention, twice broke out into dangerous rebellions; and as these, however arising from such immediate discontent, were yet a good deal connected with the opinion of Henry's usurpation and the claims of a pretender, it was a necessary policy to avoid too frequent imposition of burdens upon the poorer classes of the community. He had recourse accordingly to the system of benevolences, or contributions apparently voluntary, though in fact extorted from his richer subjects. These, having become an intolerable grievance under Edward IV., were abolished in the only parliament of Richard III. with strong expressions of indignation. But in the seventh year of Henry's reign, when, after having with timid and parsimonious hesitation suffered the marriage of Anne of Brittany with Charles VIII., he was compelled by the national spirit to make a demonstration of war, he ventured to try this unfair and unconstitutional method of obtaining aid; which received afterward too much of a parliamentary sanction by an act enforcing the payment of arrears of money which private men had thus been prevailed upon to promise.[4] The statute, indeed, of Richard is so expressed as not clearly to forbid the solicitation of voluntary gifts, which of course rendered it almost nugatory.

[3] See NOTE at end of chapter, on the intention and effect of this Statute.

[4] Stat. 11 H. 7, c. 10. Bacon says the benevolence was granted by act of parliament, which Hume shows to be a mistake. The preamble of 11 H. 7 recites it to have been "granted by divers of your subjects severally;" and contains a provision that no heir shall be charged on account of his ancestor's promise.

Archbishop Morton is famous for the dilemma which he proposed to merchants and others whom he solicited to contribute. He told those who lived handsomely that their opulence was manifest by their rate of expenditure. Those, again, whose course of living was less sumptuous, must have grown rich by their economy. Either class could well afford assistance to their sovereign. This piece of logic, unanswerable in the mouth of a privy councilor, acquired the name of Morton's fork. Henry doubtless reaped great profit from these indefinite exactions, miscalled benevolences. But, insatiate of accumulating treasure, he discovered other methods of extortion, still more odious, and possibly more lucrative. Many statutes had been enacted in preceding reigns, sometimes rashly or from temporary motives, sometimes in opposition to prevailing usages which they could not restrain, of which the pecuniary penalties, though exceedingly severe, were so little enforced as to have lost their terror. These his ministers raked out from oblivion; and, prosecuting such as could afford to endure the law's severity, filled his treasury with the dishonorable produce of amercements and forfeitures. The feudal rights became, as indeed they always had been, instrumental to oppression. The lands of those who died without heirs fell back to the crown by escheat. It was the duty of certain officers in every county to look after its rights. The king's title was to be found by the inquest of a jury, summoned at the instance of the escheator, and returned into the exchequer. It then became a matter of record, and could not be impeached. Hence the escheators taking hasty inquests, or sometimes falsely pretending them, defeated the right heir of his succession. Excessive fines were imposed on granting livery to the king's wards on their majority. Informations for intrusions, criminal indictments, outlawries on civil process, in short, the whole course of justice, furnished pretenses for exacting money; while a host of dependents on the court, suborned to play their part as witnesses, or even as jurors, rendered it hardly possible for the most innocent to escape these penalties. Empson and Dudley are notorious as the prostitute instruments of Henry's avarice in the later and more unpopular years of his reign; but they dearly purchased a brief hour of favor by an ignominious death and perpetual infamy. The avarice of Henry VII., as it rendered his government unpopular, which had always been penurious, must be deemed a drawback from the wisdom ascribed to him; though by his good fortune it answered the end of invigor-

ating his power. By these fines and forfeitures he impoverished and intimidated the nobility. The earl of Oxford compounded, by the payment of 15,000 pounds, for the penalties he had incurred by keeping retainers in livery; a practice mischievous and illegal, but too customary to have been punished before this reign. Even the king's clemency seems to have been influenced by the sordid motive of selling pardons; and it has been shown that he made a profit of every office in his court, and received money for conferring bishoprics.

It is asserted by early writers, though perhaps only on conjecture, that he left a sum, thus amassed, of no less than 1,800,000 pounds at his decease. This treasure was soon dissipated by his successor, who had recourse to the assistance of parliament in the very first year of his reign. The foreign policy of Henry VIII., far unlike that of his father, was ambitious and enterprising. No former king had involved himself so frequently in the labyrinth of continental alliances. They naturally drew the king into heavy expenses, and, together with his profusion and love of magnificence, rendered his government very burdensome. At his accession, however, the rapacity of his father's administration had excited such universal discontent, that it was found expedient to conciliate the nation. An act was passed in his first parliament to correct the abuses that had prevailed in finding the king's title to lands by escheat. The same parliament repealed the law of the late reign enabling justices of assize and of the peace to determine all offenses, except treason and felony, against any statute in force, without a jury, upon information in the king's name. This serious innovation had evidently been prompted by the spirit of rapacity, which probably some honest juries had shown courage enough to withstand. It was a much less laudable concession to the vindictive temper of an injured people, seldom unwilling to see bad methods employed in punishing bad men, that Empson and Dudley, who might perhaps by stretching the prerogative have incurred the penalties of a misdemeanor, were put to death on a frivolous charge of high treason.[5]

§ 8. The demands made by Henry VIII. on Parliament were considerable, both in frequency and amount. Notwithstanding the servility of those times, it sometimes attempted to make a stand against these inroads upon the

[5] They were convicted by a jury, and afterward attainted by parliament, but not executed for more than a year after the king's accession.

public purse. Wolsey came into the house of commons in 1523, and asked for £800,000, to be raised by a tax of one-fifth upon lands and goods, in order to prosecute the war just commenced against France. Sir Thomas More, then speaker, is said to have urged the house to acquiesce. But the sum demanded was so much beyond any precedent that all the independent members opposed a vigorous resistance. The debates lasted fifteen or sixteen days. A considerable part of the commons appears to have consisted of the king's household officers, whose influence, with the utmost difficulty, obtained a grant much inferior to the cardinal's requisition, and payable by installments in four years. But Wolsey, greatly dissatisfied with this imperfect obedience, compelled the people to pay up the whole subsidy at once.[6]

No parliament was assembled for nearly seven years after this time. Wolsey had already resorted to more arbitrary methods of raising money by loans and benevolences.[7] The year before this debate in the commons he borrowed twenty thousand pounds of the city of London; yet so insufficient did that appear for the king's exigencies, that within two months commissioners were appointed throughout the kingdom to swear every man to the value of his possessions, requiring a ratable part according to such declaration. Such unparalleled violations of the clearest and most important privilege that belonged to Englishmen excited a general apprehension. Fresh commissioners, however, were appointed in 1525, with instructions to demand the sixth part of every man's substance, payable in money, plate, or jewels, according to the last valuation. This demand Wolsey made in person to the mayor and chief citizens of London. They attempted to remonstrate, but were warned to beware, lest "it might fortune to cost some their heads." Some were sent to prison for hasty words, to which the smart of injury excited them. The clergy, from whom, according to usage, a larger measure of contribution was demanded, stood upon their privilege to grant their money only in convocation, and denied the right of a king of England to ask any man's money without authority of parliament. The rich and poor agreed in cursing the cardinal as a subverter of their laws

[6] Roper's Life of More. Hall, 656, 672. This chronicler, who wrote under Edward VI., is our best witness for the events of Henry's reign.

[7] I may notice here a mistake of Mr. Hume and Dr. Lingard. They assert Henry to have received tonnage and poundage several years before it was vested in him by the legislature. But it was granted by his first parliament, stat. 1 H. 8, c. 20, as will be found even in Ruffhead's table of contents, though not in the body of his volume; and the act is of course printed at length in the great edition of the statutes. That which probably by its title gave rise to the error, 6 H. 8, c. 13, has a different object.

and liberties; and said, "If men should give their goods by a commission, then it would be worse than the taxes of France, and England should be bond, and not free." Nor did their discontent terminate in complaints. The commissioners met with forcible opposition in several counties, and a serious insurrection broke out in Suffolk. So menacing a spirit overawed the proud tempers of Henry and his minister, who found it necessary not only to pardon all those concerned in these tumults, but to recede altogether upon some frivolous pretexts from the illegal exaction, revoking the commissions, and remitting all sums demanded under them. They now resorted to the more specious request of a voluntary benevolence. This also the citizens of London endeavored to repel, by alleging the statute of Richard III. But it was answered, that he was an usurper, whose acts did not oblige a lawful sovereign. It does not appear whether or not Wolsey was more successful in this new scheme; but, generally, rich individuals had no remedy but to compound with the government.

No very material attempt had been made since the reign of Edward III. to levy a general imposition without consent of parliament, and in the most remote and irregular times it would be difficult to find a precedent for so universal and enormous an exaction; since tallages, however arbitrary, were never paid by the barons or freeholders, nor by their tenants; and the aids to which they were liable were restricted to particular cases. If Wolsey, therefore, could have procured the acquiescence of the nation under this yoke, there would probably have been an end of parliaments for all ordinary purposes, though, like the states general of France, they might still be convoked to give weight and security to great innovations. But the courage and love of freedom natural to the English commons, speaking in the hoarse voice of tumult, though very ill supported by their superiors, preserved us in so great a peril.

§ 9. If we justly regard with detestation the memory of those ministers who have aimed at subverting the liberties of their country, we shall scarcely approve the partiality of some modern historians toward Cardinal Wolsey; a partiality, too, that contradicts the general opinion of his contemporaries. Haughty beyond comparison, negligent of the duties and decorums of his station, profuse as well as rapacious, obnoxious alike to his own order and to the laity, his fall had long been secretly desired by the nation, and contrived by his adversaries. His generosity and magnificence seem

rather to have dazzled succeeding ages than his own. But, in fact, his best apology is the disposition of his master. The latter years of Henry's reign were far more tyrannical than those during which he listened to the counsels of Wolsey; and though this was principally owing to the peculiar circumstances of the latter period, it is but equitable to allow some praise to a minister for the mischief which he may be presumed to have averted. Had a nobler spirit animated the parliament which met at the era of Wolsey's fall, it might have promoted his impeachment for gross violations of liberty. But these were not the offenses that had forfeited his prince's favor, or that they dared bring to justice. They were not absent, perhaps, from the recollection of some of those who took a part in prosecuting the fallen minister. I can discover no better apology for Sir Thomas More's participation in impeaching Wolsey on articles so frivolous that they have served to redeem his fame with later times, than his knowledge of weightier offenses against the common weal which could not be alleged, and especially the commissions of 1525.[8] But in truth this parliament showed little outward disposition to object any injustice of such a kind to the cardinal. They professed to take upon themselves to give a sanction to his proceedings, as if in mockery of their own and their country's liberties. They passed a statute, the most extraordinary, perhaps, of those strange times, wherein—

"They do, for themselves and all the whole body of the realm which they represent, freely, liberally, and absolutely, give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money which to them and every of them is, ought, or might be due, by reason of any money, or any other thing, to his grace at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters under the king's privy seal, general or particular, letter missive, promise, bond, or obligation of repayment, or by any taxation or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose."[9]

This extreme servility and breach of trust naturally excited loud murmurs; for the debts thus released had been assigned over by many to their own creditors, and, having all the se-

[8] The word impeachment is not very accurately applicable to these proceedings against Wolsey; since the articles were first presented to the upper house, and sent down to the commons, where Cromwell so ably defended his fallen master that nothing was done upon them. "Upon this honest beginning," says lord Herbert, "Cromwell obtained his first reputation." I am disposed to conjecture, from Cromwell's character and that of the house of commons, as well as from some passages of Henry's subsequent behavior toward the cardinal, that it was not the king's intention to follow up this prosecution, at least for the present.

[9] Rot. Parl., vi., 164. Burnet, Appendix, No. 31.

curity both of the king's honor and legal obligation, were reckoned as valid as any other property. It is said by Hall that most of this house of commons held offices under the crown. This illaudable precedent was remembered in 1544, when a similar act passed, releasing to the king all moneys borrowed by him since 1542, with the additional provision, that if he should have already discharged any of these debts, the party or his heirs should repay his majesty.

§ 10. Henry had once more recourse, about 1545, to a general exaction, miscalled benevolence. The council's instructions to the commissioners employed in levying it leave no doubt as to its compulsory character. They were directed to incite all men to a loving contribution according to the rates of their substance, as they were assessed at the last subsidy, calling on no one whose lands were of less value than 40*s.*, or whose chattels were less than £15. It is intimated that the least which his majesty could reasonably accept would be twenty pence in the pound on the yearly value of land, and half that sum on movable goods. They are to summon but a few to attend at one time, and to commune with every one apart, "less some one unreasonable man, among so many, forgetting his duty toward God, his sovereign lord, and his country, may go about by his malicious frowardness to silence all the rest, be they never so well disposed." They were to use "good words and amiable behavior," to induce men to contribute, and to dismiss the obedient with thanks. But if any person should withstand their gentle solicitations, alleging either poverty or some other pretense which the commissioners should deem unfit to be allowed, then, after failure of persuasions and reproaches for ingratitude, they were to command his attendance before the privy council, at such time as they should appoint, to whom they were to certify his behavior, enjoining him silence in the mean time, that his evil example might not corrupt the better disposed.[10]

It is only through the accidental publication of some family papers that we have become acquainted with this document, so curiously illustrative of the government of Henry VIII. From the same authority may be exhibited a particular specimen of the consequences that awaited the refusal of this benevolence. One Richard Reed, an alderman of London,

[10] Lodge's Illustrations of British History, i., 711. Strype's Eccles. Memorials, Appendix, n. 119. The sums raised from different counties for this benevolence afford a sort of criterion of their relative opulence. Somerset gave £6807; Kent, £6471; Suffolk, £4512; Norfolk, £4046; Devon, £4527; Essex, £5051; but Lancaster only £660, and Cumberland £574. The whole produced £119,581 7*s.* 6*d.* besides arrears.

had stood alone, as is said, among his fellow-citizens, in refusing to contribute. It was deemed expedient not to overlook this disobedience; and the course adopted in punishing it is somewhat remarkable. The English army was then in the field on the Scots border. Reed was sent down to serve as a soldier at his own charge; and the general, sir Ralph Ewer, received intimations to employ him on the hardest and most perilous duty, and subject him, when in garrison, to the greatest privations, that he might feel the smart of his folly and sturdy disobedience. "Finally," the letter concludes, "you must use him in all things according to the sharp disciplyne militar of the northern wars."[11] It is natural to presume that few would expose themselves to the treatment of this unfortunate citizen; and that the commissioners whom we find appointed two years afterward in every county, to obtain from the king's subjects as much as they would willingly give, if they did not always find perfect readiness, had not to complain of many peremptory denials.

§ 11. Such was the security that remained against arbitrary taxation under the two Henries. Were men's lives better protected from unjust measures, and less at the mercy of a jealous court? It can not be necessary to expatiate very much on this subject in a work that supposes the reader's acquaintance with the common facts of our history; yet it would leave the picture too imperfect, were I not to recapitulate the more striking instances of sanguinary injustice, that have cast so deep a shade over the memory of these princes.

The duke of Clarence, attainted in the reign of his brother Edward IV., left one son, whom his uncle restored to the title of earl of Warwick. This boy, at the accession of Henry VII., being then about twelve years old, was shut up in the Tower. Fifteen years of captivity had elapsed, when, if we trust to the common story, having unfortunately become acquainted with his fellow-prisoner Perkin Warbeck, he listened to a scheme for their escape, and would probably not have been averse to second the ambitious views of that young man. But it was surmised, with as much likelihood as the character of both parties could give it, that the king had promised Ferdinand of Aragon to remove the earl of Warwick out of the way, as the condition of his daughter's marriage with the prince of Wales, and the best means of se-

[11] Lodge, p. 80. Lord Herbert mentions this story, and observes, that Reed having been taken by the Scots, was compelled to pay much more for his ransom than the benevolence required of him.

curing their inheritance. Warwick accordingly was brought to trial for a conspiracy to overturn the government; which he was induced to confess, in the hope, as we must conceive, and perhaps with an assurance, of pardon, and was immediately executed.

The nearest heir to the house of York, after the queen and her children and the descendants of the duke of Clarence, was a son of Edward IV.'s sister, the earl of Suffolk, whose elder brother, the earl of Lincoln, had joined in the rebellion of Lambert Simnel, and perished at the battle of Stoke. Suffolk, having killed a man in an affray, obtained a pardon, which the king compelled him to plead in open court at his arraignment. This laudable impartiality is said to have given him offense, and provoked his flight into the Netherlands; whence, being a man of a turbulent disposition, and partaking in the hatred of his family toward the house of Lancaster, he engaged in a conspiracy with some persons at home, which caused him to be attainted of treason. Some time afterward, the arch-duke Philip, having been shipwrecked on the coast of England, found himself in a sort of honorable detention at Henry's court. On consenting to his departure, the king requested him to send over the earl of Suffolk; and Philip, though not insensible to the breach of hospitality exacted from him, was content to satisfy his honor by obtaining a promise that the prisoner's life should be spared. Henry is said to have reckoned this engagement merely personal, and to have left as a last injunction to his successor, that he should carry into effect the sentence against Suffolk. Though this was an evident violation of the promise in its spirit, yet Henry VIII., after the lapse of a few years, with no new pretext, caused him to be executed.

The duke of Buckingham, representing the ancient family of Stafford, and hereditary high constable of England, stood the first in rank and consequence, perhaps in riches, among the nobility. But being too ambitious and arrogant for the age in which he was born, he drew on himself the jealousy of the king and the resentment of Wolsey. The evidence on his trial for high treason was almost entirely confined to idle and vaunting language, held with servants who betrayed his confidence, and soothsayers whom he had believed. As we find no other persons charged as parties with him, it seems manifest that Buckingham was innocent of any real conspiracy. His condemnation not only gratified the cardinal's revenge, but answered a very constant purpose of the Tudor government, that of intimidating the great families from

whom the preceding dynasty had experienced so much disquietude.[12]

§ 12. The execution, however, of Suffolk was at least not contrary to law; and even Buckingham was attainted on evidence which, according to the tremendous latitude with which the law of treason had been construed, a court of justice could not be expected to disregard. But after the fall of Wolsey, and Henry's breach with the Roman see, his fierce temper, strengthened by habit and exasperated by resistance, demanded more constant supplies of blood; and many perished by sentences which we can hardly prevent ourselves from considering as illegal, because the statutes to which they might be conformable seem, from their temporary duration, their violence, and the passiveness of the parliaments that enacted them, rather like arbitrary invasions of the law than alterations of it. By an act of 1534,[13] an oath was imposed to maintain the succession in the heirs of the king's second marriage, in exclusion of the princess Mary, and made it misprision of treason to refuse to take this oath. On this Sir Thomas More and Bishop Fisher, who scrupled the preamble to the oath, denying the pope's right of dispensation, though they would have sworn to the succession itself, as a legislative enactment, were convicted and imprisoned. But a subsequent statute, 26 H. 8, c. 13, made it high treason to wish by words to deprive the king of his title, name, or dignity; and the appellation Supreme Head being part of this title, not only More and Fisher, but several others, suffered death on this construction.

The sudden and harsh innovations made by Henry in religion, as to which every artifice of concealment and delay is required, his destruction of venerable establishments, his tyranny over the recesses of the conscience, excited so dangerous a rebellion in the north of England that his own general, the duke of Norfolk, thought it absolutely necessary to employ measures of conciliation. The insurgents laid down their arms on an unconditional promise of amnesty. But another rising having occurred in a different quarter, the king made use of this pretext to put to death some persons of superior rank, who, though they had, voluntarily or by compulsion, partaken in the first rebellion, had no concern in

[12] Hall, 622. Hume, who is favorable to Wolsey, says, "There is no reason to think the sentence against Buckingham unjust." But no one who reads the trial will find any evidence to satisfy a reasonable mind; and Hume himself soon after adds, that his crime proceeded more from indiscretion than deliberate malice. In fact, the condemnation of this great noble was owing to Wolsey's resentment, acting on the savage temper of Henry.

[13] 25 H. 8, c. 22.

the second, and to let loose military law upon their followers. Nor was his vengeance confined to those who had evidently been guilty of these tumults. It is, indeed, unreasonable to deny that there might be, nay, there probably were, some real conspirators among those who suffered on the scaffolds of Henry. Yet in the proceedings against the countess of Salisbury, an aged woman, but obnoxious as the daughter of the duke of Clarence and mother of Reginald Pole, an active instrument of the pope in fomenting rebellion, against the abbots of Reading and Glastonbury, and others who were implicated in charges of treason at this period, we find so much haste, such neglect of judicial forms, and so bloodthirsty a determination to obtain convictions, that we are naturally tempted to reckon them among the victims of revenge or rapacity.

§ 13. It was probably during these prosecutions that Cromwell, a man not destitute of liberal qualities, but who is liable to the one great reproach of having obeyed too implicitly a master whose commands were crimes, inquired of the judges whether, if parliament should condemn a man to die for treason without hearing him, the attainder could ever be disputed. They answered that it was a dangerous question, and that parliament should rather set an example to inferior courts by proceeding according to justice. But being pressed to reply by the king's express commandment, they said that an attainder in parliament, whether the party had been heard or not in his defense, could never be reversed in a court of law. No proceedings, it is said, took place against the person intended, nor is it known who he was. But men prone to remark all that seems an appropriate retribution of Providence, took notice that he who had thus solicited the interpreters of the law to sanction such a violation of natural justice, was himself its earliest example. In the apparent zenith of favor this able and faithful minister, the king's vicegerent in his ecclesiastical supremacy, and recently created earl of Essex, fell so suddenly, and so totally without offense, that it has perplexed some writers to assign the cause. But there seems little doubt that Henry's dissatisfaction with his fourth wife, Anne of Cleves, whom Cromwell had recommended, alienated his selfish temper, and inclined his ear to the whisperings of those courtiers who abhorred the favorite and his measures. An act attainting him of treason and heresy was hurried through parliament, without hearing him in his defense. This precedent of sentencing men unheard, by means of an act of attainder, was fol-

lowed in the case of Dr. Barnes, burned not long afterward for heresy.

§ 14. The duke of Norfolk had been throughout Henry's reign one of his most confidential ministers. But as the king approached his end, an inordinate jealousy of great men rather than mere caprice appears to have prompted the resolution of destroying the most conspicuous family in England. Norfolk's son, too, the earl of Surrey, though long a favorite with the king, possessed more talents and renown, as well as a more haughty spirit, than were compatible with his safety. A strong party at court had always been hostile to the duke of Norfolk; and his ruin was attributed especially to the influence of the two Seymours. No accusations could be more futile than those which sufficed to take away the life of the noblest and most accomplished man in England. Surrey's treason seems to have consisted chiefly in quartering the royal arms in his escutcheon; and this false heraldry, if such it were, must have been considered as evidence of meditating the king's death. His father ignominiously confessed the charges against himself, in a vain hope of mercy from one who knew not what it meant. An act of attainder (for both houses of parliament were commonly made accessary to the legal murders of this reign) was passed with much haste, and perhaps irregularity; but Henry's demise ensuing at the instant prevented the execution of Norfolk. Continuing in prison during Edward's reign, he just survived to be released and restored in blood under Mary.

§ 15. Among the victims of this monarch's ferocity, as we bestow most of our admiration on Sir Thomas More, so we reserve our greatest pity for Anne Boleyn. Few, very few, have in any age hesitated to admit her innocence. But her discretion was by no means sufficient to preserve her steps on that dizzy height, which she had ascended with more eager ambition than feminine delicacy could approve. Henry was probably quicksighted enough to perceive that he did not possess her affections, and his own were soon transferred to another object. Nothing in this detestable reign is worse than her trial. She was indicted, partly upon the statute of Edward III., which, by a just though rather technical construction, has been held to extend the guilt of treason to an adulterous queen as well as to her paramour, and partly on the recent law for preservation of the succession, which attached the same penalties to any thing done or said in slander of the king's issue. Her levities in discourse were brought within this strange act by a still more strange in-

terpretation. Nor was the wounded pride of the king content with her death. Under the fear, as is most likely, of a more cruel punishment, which the law affixed to her offense, Anne was induced to confess a pre-contract with Lord Percy, on which her marriage with the king was annulled by an ecclesiastical sentence, without awaiting its certain dissolution by the axe. Catherine Howard had indulged in licentious habits before her marriage, but her post-nuptial guilt is very questionable, which makes her execution, and that of others who suffered with her, another of Henry's murders. It was after the execution of this fifth wife that the celebrated law was enacted, whereby any woman whom the king should marry as a virgin incurred the penalties of treason if she did not previously reveal any failings that had disqualified her for the service of Diana.

§ 16. Henry's two divorces had created an uncertainty as to the line of succession, which parliament endeavored to remove, not by such constitutional provisions in concurrence with the crown as might define the course of inheritance, but by enabling the king, on failure of issue by Jane Seymour, or any other lawful wife, to make over and bequeath the kingdom to any persons at his pleasure, not even reserving a preference to the descendants of former sovereigns. By a subsequent statute, the princesses Mary and Elizabeth were nominated in the entail, after the king's male issue, subject, however, to such conditions as he should declare, by non-compliance with which their right was to cease. This act still left it in his power to limit the remainder at his discretion. In execution of this authority, he devised the crown, upon failure of issue from his three children, to the heirs of the body of Mary duchess of Suffolk, the younger of his two sisters; postponing at least, if not excluding, the royal family of Scotland, descended from his elder sister Margaret. In surrendering the regular laws of the monarchy to one man's caprice, this parliament became accessary, so far as in it lay, to dispositions which might eventually have kindled the flames of civil war. But it seemed to aim at inflicting a still deeper injury on future generations, in enacting that a king, after he should have attained the age of twenty-four years, might repeal any statutes made since his accession. Such a provision not only tended to annihilate the authority of a regency, and to expose the kingdom to a sort of anarchical confusion during its continuance, but seemed to prepare the way for a more absolute power of abrogating all acts of the legislature. Three years afterward

it was enacted that proclamations made by the king and council, under penalty of fine and imprisonment, should have the force of statutes, so that they should not be prejudicial to any person's inheritance, offices, liberties, goods and chattels, or infringe the established laws. This has been often noticed as an instance of servile compliance. It is, however, a striking testimony to the free constitution it infringed, and demonstrates that the prerogative could not soar to the heights it aimed at, till thus impeded by the perfidious hand of parliament. It is also to be observed, that the power given to the king's proclamations is considerably limited.

§ 17. A government administered with so frequent violations not only of the chartered privileges of Englishmen, but of those still more sacred rights which natural law has established, must have been regarded, one would imagine, with just abhorrence, and earnest longings for a change. Yet contemporary authorities by no means answer to this expectation. Some mention Henry after his death in language of eulogy; and, if we except those whom attachment to the ancient religion had inspired with hatred toward his memory, very few appear to have been aware that his name would descend to posterity among those of the many tyrants and oppressors of innocence, whom the wrath of Heaven has raised up, and the servility of men has endured. I do not indeed believe that he had really conciliated his people's affection. That perfect fear which attended him must have cast out love. But he had a few qualities that deserve esteem, and several which a nation is pleased to behold in a sovereign. He wanted, or at least did not manifest in any eminent degree, one usual vice of tyrants, dissimulation: his manners were affable, and his temper generous. Though his schemes of foreign policy were not very sagacious, and his wars, either with France or Scotland, productive of no material advantage, they were uniformly successful, and retrieved the honor of the English name. But the main cause of the reverence with which our forefathers cherished this king's memory was the share he had taken in the Reformation. They saw in him, not indeed the proselyte of their faith, but the subverter of their enemies' power, the avenging minister of Heaven, by whose giant arm the chain of superstition had been broken, and the prison gates burst asunder.

§ 18. The ill-assorted body of councilors who exercised the functions of regency by Henry's testament were sensible that they had not sinews to wield his iron sceptre, and that

some sacrifice must be made to a nation exasperated as well as overawed by the violent measures of his reign. In the first session, accordingly, of Edward's parliament, the new treasons and felonies which had been created to please his father's sanguinary disposition were at once abrogated.

The statute of Edward III. became again the standard of high treason, except that the denial of the king's supremacy was still liable to its penalties. The same act, which relieves the subject from these terrors, contains also a repeal of that which had given legislative validity to the king's proclamations. These provisions appear like an elastic recoil of the constitution after the extraordinary pressure of that despotic reign. But however they may indicate the temper of parliament, we must consider them but as an unwilling and insincere compliance on the part of the government. Henry, too arrogant to dissemble with his subjects, had stamped the law itself with the print of his despotism. The more wily courtiers of Edward's council deemed it less obnoxious to violate than to new-mold the constitution. For, although proclamations had no longer the legal character of statutes, we find several during Edward's reign enforced by penalty of fine and imprisonment. Many of the ecclesiastical changes were first established by no other authority, though afterward sanctioned by parliament.

It soon became evident that if the new administration had not fully imbibed the sanguinary spirit of their late master, they were as little scrupulous in bending the rules of law and justice to their purpose in cases of treason. The duke of Somerset, nominated by Henry as one only of his sixteen executors, obtained almost immediately afterward a patent from the young king, constituting him sole regent under the name of protector, with the assistance, indeed, of the rest as his councilors, but with the power of adding any others to their number. Conscious of his own usurpation, it was natural for Somerset to dread the aspiring views of others; nor was it long before he discovered a rival in his brother, lord Seymour, of Sudeley, whom, according to the policy of that age, he thought it necessary to destroy by a bill of attainder. Seymour was apparently a dangerous and unprincipled man; he had courted the favor of the young king by small presents of money, and appears beyond question to have entertained a hope of marrying the princess Elizabeth, who had lived much in his house during his short union with the queen dowager. It was surmised that this lady had been poisoned to make room for a still nobler consort. But

in this there could be no treason; and it is not likely that any evidence was given which could have brought him within the statute of Edward III. In this prosecution against lord Seymour it was thought expedient to follow the very worst of Henry's precedents, by not hearing the accused in his defense. The bill passed through the upper house, the natural guardian of a peer's life and honor, without one dissenting voice.

But it was more easy to crush a single competitor than to keep in subjection the subtle and daring spirits trained in Henry's councils, and jealous of the usurpation of an equal. The protector, attributing his success, as is usual with men in power, rather to skill than fortune, and confident in the two frailest supports that a minister can have, the favor of a child and of the lower people, was stripped of his authority within a few months after the execution of lord Seymour, by a confederacy which he had neither the discretion to prevent nor the firmness to resist. Though from this time but a secondary character upon the public stage, he was so near the throne as to keep alive the suspicions of the duke of Northumberland, who, with no ostensible title, had become not less absolute than himself. It is not improbable that Somerset was innocent of the charge imputed to him, namely, a conspiracy to murder some of the privy councilors, which had been erected into felony by a recent statute; but the evidence, though it may have been false, does not seem legally insufficient. He demanded on his trial to be confronted with the witnesses, a favor rarely granted in that age to state criminals, and which he could not very decently solicit after causing his brother to be condemned unheard. Three lords, against whom he was charged to have conspired, sat upon his trial; and it was thought a sufficient reply to his complaints of this breach of a known principle that no challenge could be allowed in the case of a peer.

From this designing and unscrupulous oligarchy no measure conducive to liberty and justice could be expected to spring. But among the commons there must have been men, although their names have not descended to us, who, animated by a purer zeal for these objects, perceived on how precarious a thread the life of every man was suspended, when the private deposition of one suborned witness, unconfronted with the prisoner, could suffice to obtain a conviction in cases of treason. In the worst period of Edward's reign we find inserted in a bill creating some new treasons one of the most important constitutional provisions which

the annals of the Tudor family afford. It is enacted that "no person shall be indicted for any manner of treason except on the testimony of two lawful witnesses, who shall be brought in person before the accused at the time of his trial, to avow and maintain what they have to say against him, unless he shall willingly confess the charges."[14] This salutary provision was strengthened, not taken away, as some later judges ventured to assert, by an act in the reign of Mary. In a subsequent part of this work, I shall find an opportunity for discussing this important branch of constitutional law.

§ 19. It seems hardly necessary to mention the momentary usurpation of lady Jane Grey, founded on no pretext of title which could be sustained by any argument. The reign that immediately followed is chiefly remembered as a period of sanguinary persecution; but though I reserve for the next chapter all mention of ecclesiastical disputes, some of Mary's proceedings in re-establishing popery belong to the civil history of our constitution. Impatient under the existence, for a moment, of rights and usages which she abhorred, this bigoted woman anticipated the legal authority which her parliament was ready to interpose for their abrogation; the Latin liturgy was restored, the married clergy expelled from their livings, and even many protestant ministers thrown into prison for no other crime than their religion, before any change had been made in the established laws. The queen, in fact, and those around her, acted and felt as a legitimate government restored after an usurpation, and treated the recent statutes as null and invalid. But even in matters of temporal government the stretches of prerogative were more violent and alarming than during her brother's reign. It is due, indeed, to the memory of one who has left so odious a name, to remark that Mary was conscientiously averse to encroach upon what she understood to be the privileges of her people. A wretched book having been written to exalt her prerogative, on the ridiculous pretense that, as a queen, she was not bound by the laws of former kings, she showed it to Gardiner, and on his expressing indignation at the sophism, threw it herself into the fire. An act passed, however, to settle such questions, which declares the queen to have all the lawful prerogatives of the crown. But she was surrounded by wicked councilors, renegades of every faith, and ministers of every tyranny. We must, in candor, attribute to their advice her arbitrary measures, though not her

[14] Stat. 5 & 6 Edw. 6, c. 11, s. 12.

persecution of heresy, which she counted for virtue. She is said to have extorted loans from the citizens of London, and others of her subjects. This, indeed, was not more than had been usual with her predecessors. But we find one clear instance during her reign of a duty upon foreign cloth, imposed without assent of parliament; an encroachment unprecedented since the reign of Richard II. Several proofs might be adduced from records of arbitrary inquests for offenses and illegal modes of punishment. The torture is, perhaps, more frequently mentioned in her short reign than in all former ages of our history put together, and, probably from that imitation of foreign governments, which contributed not a little to deface our constitution in the sixteenth century, seems deliberately to have been introduced as part of the process in those dark and uncontrolled tribunals which investigated offenses against the state. A commission issued in 1557, authorizing the persons named in it to inquire, by any means they could devise, into charges of heresy or other religious offenses, and in some instances to punish the guilty, in others of a graver nature to remit them to their ordinaries, seems (as Burnet has well observed) to have been meant as a preliminary step to bringing in the inquisition. It was at least the germ of the high-commission court in the next reign. One proclamation in the last year of her inauspicious administration may be deemed a flight of tyranny beyond her father's example, which, after denouncing the importation of books filled with heresy and treason from beyond sea, proceeds to declare that whoever should be found to have such books in his possession should be reputed and taken for a rebel, and executed according to martial law. This had been provoked as well by a violent libel written at Geneva by Goodman, a refugee, exciting the people to dethrone the queen, as by the recent attempt of one Stafford, a descendant of the house of Buckingham, who, having landed with a small force at Scarborough, had vainly hoped that the general disaffection would enable him to overthrow her government.

§ 20. Notwithstanding, however, this apparently uncontrolled career of power, it is certain that the children of Henry VIII. did not preserve his almost absolute dominion over parliament. I have only met with one instance in his reign where the commons refused to pass a bill recommended by the crown. This was in 1532; but so unquestionable were the legislative rights of parliament, that, although much displeased, even Henry was forced to yield. We find sever-

al instances during the reign of Edward, and still more in that of Mary, where the commons rejected bills sent down from the upper house; and though there was always a majority of peers for the government, yet the dissent of no small number is frequently recorded in the former reign. Thus the commons not only threw out a bill creating several new treasons, and substituted one of a more moderate nature, with that memorable clause for two witnesses to be produced in open court, which I have already mentioned; but rejected one attainting Tunstal, bishop of Durham, for misprision of treason, and were hardly brought to grant a subsidy. Their conduct in the two former instances, and probably in the third, must be attributed to the indignation that was generally felt at the usurped power of Northumberland, and the untimely fate of Somerset. Several cases of similar unwillingness to go along with court measures occurred under Mary. She dissolved, in fact, her first two parliaments on this account. But the third was far from obsequious, and rejected several of her favorite bills. Two reasons principally contributed to this opposition: the one, a fear of entailing upon the country those numerous exactions of which so many generations had complained, by reviving the papal supremacy, and more especially of a restoration of abbey lands; the other, an extreme repugnance to the queen's Spanish connection. If Mary could have obtained the consent of parliament, she would have settled the crown on her husband, and sent her sister, perhaps, to the scaffold.

§ 21. There can not be a stronger proof of the increased weight of the commons during these reigns than the anxiety of the court to obtain favorable elections. Many ancient boroughs, undoubtedly, have at no period possessed sufficient importance to deserve the elective franchise on the score of their riches or population; and it is most likely that some temporary interest or partiality, which can not now be traced, first caused a writ to be addressed to them. But there is much reason to conclude that the councilors of Edward VI., in erecting new boroughs, acted upon a deliberate plan of strengthening their influence among the commons. Twenty-two boroughs were created or restored in this short reign; some of them, indeed, places of much consideration; but not less than seven in Cornwall, and several others that appear to have been insignificant. Mary added fourteen to the number; and as the same course was pursued under Elizabeth, we in fact owe a great part of that irregularity in our popular representation, the advantages or evils of which

we need not here discuss, less to changes wrought by time, than to deliberate and not very constitutional policy. Nor did the government scruple at direct and avowed interference with elections. A circular letter of Edward to all the sheriffs commands them to give notice to the freeholders, citizens, and burgesses, within their respective counties, "that our pleasure and commandment is, that they shall choose and appoint, as nigh as they possibly may, men of knowledge and experience within the counties, cities, and boroughs;" but nevertheless, that where the privy council should "recommend men of learning and wisdom, in such case their directions be regarded and followed." Several persons accordingly were recommended by letters to the sheriffs, and elected as knights for different shires; all of whom belonged to the court, or were in places of trust about the king. It appears probable that persons in office formed at all times a very considerable portion of the house of commons. Another circular of Mary before the parliament of 1554, directing the sheriffs to admonish the electors to choose good catholics and "inhabitants, as the old laws require," is much less unconstitutional; but the earl of Sussex, one of her most active councilors, wrote to the gentlemen of Norfolk, and to the burgesses of Yarmouth, requesting them to reserve their voices for the person he should name.

§ 22. It appears to be a very natural inquiry, after beholding the course of administration under the Tudor line, by what means a government so violent in itself, and so plainly inconsistent with the acknowledged laws, could be maintained; and what had become of that English spirit which had not only controlled such injudicious princes as John and Richard II., but withstood the first and third Edward in the fullness of their pride and glory. There had evidently been a retrograde tendency toward absolute monarchy between the reigns of Henry VI. and Henry VIII. Nor could this be attributed to the common engine of despotism, a military force. For, except the yeomen of the guard, fifty in number, and the common servants of the king's household, there was not, in time of peace, an armed man receiving pay throughout England. A government that ruled by intimidation was absolutety destitute of force to intimidate. Hence risings of the mere commonalty were sometimes highly dangerous, and lasted much longer than ordinary. A rabble of Cornishmen, in the reign of Henry VII., headed by a blacksmith, marched up from their own county to the suburbs of London without resistance. The insurrections of 1525 in

consequence of Wolsey's illegal taxation, those of the north ten years afterward, wherein, indeed, some men of higher quality were engaged, and those which broke out simultaneously in several counties under Edward VI., excited a well-grounded alarm in the country, and in the two latter instances were not quelled without much time and exertion. The reproach of servility and patient acquiescence under usurped power falls not on the English people, but on its natural leaders. We have seen, indeed, that the house of commons now and then gave signs of an independent spirit, and occasioned more trouble, even to Henry VIII., than his compliant nobility. They yielded to every mandate of his imperious will; they bent with every breath of his capricious humor; they are responsible for the illegal trial, for the iniquitous attainder, for the sanguinary statute, for the tyranny which they sanctioned by law, and for that which they permitted to subsist without law. Nor was this selfish and pusillanimous subserviency more characteristic of the minions of Henry's favor, the Cromwells, the Riches, the Pagets, the Russells, and the Powletts, than of the representatives of ancient and honorable houses, the Howards, the Fitz-Allans, and the Talbots. We trace the noble statesmen of those reigns concurring in all the inconsistencies of their revolutions, supporting all the religions of Henry, Edward, Mary, and Elizabeth; adjudging the death of Somerset to gratify Northumberland, and of Northumberland to redeem their participation in his fault, setting up the usurpation of lady Jane, and abandoning her on the first doubt of success, constant only in the rapacious acquisition of estates and honors, from whatever source, and in adherence to the present power.

§ 23. I have noticed in a former work that illegal and arbitrary jurisdiction exercised by the council, which, in despite of several positive statutes, continued in a greater or less degree, through all the period of the Plantagenet family, to deprive the subject, in many criminal charges, of that sacred privilege, trial by his peers. This usurped jurisdiction, carried much farther, and exercised more vigorously, was the principal grievance under the Tudors; and the forced submission of our forefathers was chiefly owing to the terrors of a tribunal which left them secure from no infliction but public execution, or actual dispossession of their freeholds. And, though it was beyond its direct province to pass sentence on capital charges, yet, by intimidating jurors, it procured convictions which it was not authorized to pronounce. We are naturally astonished at the easiness

with which verdicts were sometimes given against persons accused of treason, on evidence insufficient to support the charge in point of law, or in its nature not competent to be received, or unworthy of belief. But this is explained by the peril that hung over the jury in case of acquittal.

"If," says Sir Thomas Smith, in his Treatise on the Commonwealth of England, "they do pronounce not guilty upon the prisoner, against whom manifest witness is brought in, the prisoner escapeth, but the twelve are not only rebuked by the judges, but also threatened of punishment, and many times commanded to appear in the star-chamber, or before the privy council, for the matter. But this threatening chanceth oftener than the execution thereof, and the twelve answer with most gentle words, they did it according to their consciences, and pray the judges to be good unto them; they did as they thought right, and as they accorded all; and so it passeth away for the most part. Yet I have seen in my time, but not in the reign of the king now [Elizabeth], that an inquest, for pronouncing one not guilty of treason contrary to such evidence as was brought in, were not only imprisoned for a space, but a large fine set upon their heads, which they were fain to pay; another inquest, for acquitting another, besides paying a fine, were put to open ignominy and shame. But these doings were even then accounted of many for violent, tyrannical, and contrary to the liberty and custom of the realm of England."[15]

One of the instances to which he alludes was probably that of the jury who acquitted Sir Nicholas Throckmorton in the second year of Mary. He had conducted his own defense with singular boldness and dexterity. On delivering their verdict, the court committed them to prison. Four, having acknowledged their offense, were soon released; but the rest, attempting to justify themselves before the council, were sentenced to pay, some a fine of two thousand pounds, some of one thousand marks; a part of which seems ultimately to have been remitted.

§ 24. It is here to be observed that the council of which we have just heard, or, as lord Hale denominates it (though rather, I believe, for the sake of distinction than upon any ancient authority), the king's ordinary council, was something different from the privy council, with which several modern writers are apt to confound it; that is, the court of jurisdiction is to be distinguished from the deliberative body, the advisers of the crown. Every privy councilor belonged to the concilium ordinarium; but the chief justices, and perhaps several others who sat in the latter (not to mention all temporal and spiritual peers, who, in the

[15] Commonwealth of England, book 3, c. 1. The statute 26 H. 8, c. 4, enacts that if a jury in Wales acquit a felon, contrary to good and pregnant evidence, or otherwise misbehave themselves, the judge may bind them to appear before the president and council of the Welsh marches. The partiality of Welsh jurors was notorious in that age; and the reproach has not quite ceased.

opinion at least of some, had a right of suffrage therein), were not necessarily of the former body. This can not be called in question, without either charging lord Coke, lord Hale, and other writers on the subject, with ignorance of what existed in their own age, or gratuitously supposing that an entirely novel tribunal sprang up in the sixteenth century, under the name of the star-chamber. It has indeed been often assumed, that a statute enacted early in the reign of Henry VII. gave the first legal authority to the criminal jurisdiction exercised by that famous court, which in reality was nothing else but another name for the ancient concilium regis, of which our records are full, and whose encroachments so many statutes had endeavored to repress; a name derived from the chamber wherein it sat, and which is found in many precedents before the time of Henry VII., though not so specially applied to the council of judicature as afterward.[16] The statute of this reign has a much more limited operation. I have observed in another work, that the coercive jurisdiction of the council had great convenience, in cases where the ordinary course of justice was so much obstructed by one party, through writs, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed; and that such seem to have been reckoned necessary exceptions from the statutes which restrain its interference. The act of 3 H. 7, c. 1, appears intended to place on a lawful and permanent basis the jurisdiction of the council, or rather a part of the council, over this peculiar class of offenses; and after reciting the combinations supported by giving liveries, and by indentures or promises, the partiality of sheriffs in making panels, and in untrue returns, the taking of money by juries, the great riots and unlawful assemblies, which almost annihilated the fair administration of justice, empowers the chancellor, treasurer, and keeper of the privy seal, or any two of them, with a bishop and temporal lord of the council, and the chief justices of king's bench and common pleas, or two other justices in their absence, to call before them such as offended in the before-mentioned respects, and to punish them after examination in such manner as if they had been convicted by course of law. But this statute, if it renders legal a jurisdiction which had long been exercised with much advantage, must be allowed to limit the persons in whom it should reside, and certainly does not convey by any implication more extensive functions over a different description of misdemeanors. By a later act, 21 H. 8, c. 20, the president of

[16] The privy council sometimes met in the star-chamber, and made orders.

the council is added to the judges of this court; a decisive proof that it still existed as a tribunal perfectly distinct from the council itself. But it is not styled by the name of star-chamber in this, any more than in the preceding statute. It is very difficult, I believe, to determine at what time the jurisdiction legally vested in this new court, and still exercised by it forty years afterward, fell silently into the hands of the body of the council, and was extended by them so far beyond the boundaries assigned by law, under the appellation of the court of star-chamber. Sir Thomas Smith, writing in the early part of Elizabeth's reign, while he does not advert to the former court, speaks of the jurisdiction of the latter as fully established, and ascribes the whole praise (and to a certain degree it was matter of praise) to Cardinal Wolsey.

The celebrated statute of 31 H. 8, c. 8, which gives the king's proclamations, to a certain extent, the force of acts of parliament, enacts that offenders convicted of breaking such proclamations before certain persons enumerated therein (being apparently the usual officers of the privy council, together with some bishops and judges), "in the star-chamber or elsewhere," shall suffer such penalties of fine and imprisonment as they shall adjudge.

"It is the effect of this court," Smith says, "to bridle such stout noblemen or gentlemen which would offer wrong by force to any manner of men, and can not be content to demand or defend the right by order of the law. It began long before, but took augmentation and authority at that time that Cardinal Wolsey, archbishop of York, was chancellor of England, who of some was thought to have first devised that court, because that he, after some intermission, by negligence of time, augmented the authority of it, which was at that time marvelous necessary to do to repress the insolency of the noblemen and gentlemen in the north parts of England, who being far from the king and the seat of justice, made almost, as it were, an ordinary war among themselves, and made their force their law, binding themselves, with their tenants and servants, to do or revenge an injury one against another as they listed. This thing seemed not supportable to the noble prince Henry VIII.; and sending for them one after another to his court, to answer before the persons before named, after they had remonstrance showed them of their evil demeanor, and been well disciplined, as well by words as by *fleeting* [confinement in the Fleet prison] awhile, and thereby their pride and courage somewhat assuaged, they began to range themselves in order, and to understand that they had a prince who would rule his subjects by his law and obedience. Since that time, this court has been in more estimation, and is continued to this day in manner as I have said before."[17]

But, as the court erected by the statute of Henry VII. appears to have been in activity as late as the fall of cardinal Wolsey, and exercised its jurisdiction over precisely that class of offenses which Smith here describes, it may perhaps

[17] Commonwealth of England, book 3, c. 4.

be more likely that it did not wholly merge in the general body of the council till the minority of Edward, when that oligarchy became almost independent and supreme.

In this half-barbarous state of manners we certainly discover an apology, as well as motive, for the council's interference; for it is rather a servile worshiping of names than a rational love of liberty to prefer the forms of trial to the attainment of justice, or to fancy that verdicts obtained by violence or corruption are at all less iniquitous than the violent or corrupt sentences of a court. But there were many cases wherein neither the necessity of circumstances nor the legal sanction of any statute could excuse the jurisdiction habitually exercised by the court of star-chamber. Lord Bacon takes occasion from the act of Henry VII. to descant on the sage and noble institution, as he terms it, of that court, whose walls had been so often witnesses to the degradation of his own mind. It took cognizance principally, he tells us, of four kinds of causes, "forces, frauds, crimes, various of stellionate, and the inchoations or middle acts toward crimes, capital or heinous, not actually committed or perpetrated."[18] Sir Thomas Smith uses expressions less indefinite than these last; and specifies scandalous reports of persons in power, and seditious news, as offenses which they were accustomed to punish. We shall find abundant proofs of this department of their functions in the succeeding reigns. But this was in violation of many ancient laws, and not in the least supported by that of Henry VII.[19]

§ 25. A tribunal so vigilant and severe as that of the star-chamber, proceeding by modes of interrogatory unknown to the common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy. We have seen how the council dealt with those who refused to lend money by way of benevolence, and with the juries who found verdicts that they disapproved. Those that did not yield obedience to their proclamations were not likely to fare better. I know not whether menaces were used toward members of the commons who took part against the crown; but it would not be unreasonable to believe it, or at least that a man of moderate

[18] Hist. of Henry VII. in Bacon's Works, ii., p. 290.

[19] The result of what has been said in the last pages may be summed up in a few propositions. 1. The court erected by the statute of 3 Henry VII. was not the court of star-chamber. 2. This court by the statute subsisted in full force till beyond the middle of Henry VIII.'s reign, but not long afterward went into disuse. 3. The court of star-chamber was the old concilium ordinarium, against whose jurisdiction many statutes had been enacted from the time of Edward III. 4. No part of the jurisdiction exercised by the star-chamber could be maintained on the authority of the statute of Henry VII.

courage would scarcely care to expose himself to the resentment which the council might indulge after a dissolution.

In the persevering struggles of earlier parliaments against Edward III., Richard II., and Henry IV., it is a very probable conjecture that many considerable peers acted in union with, and encouraged the efforts of, the commons. But in the period now before us the nobility were precisely the class most deficient in that constitutional spirit which was far from being extinct in those below them. They knew what havoc had been made among their fathers by multiplied attainders during the rivalry of the two roses. They had seen terrible examples of the danger of giving umbrage to a jealous court, in the fate of Lord Stanley and the duke of Buckingham, both condemned on slight evidence of treacherous friends and servants, from whom no man could be secure. Though rigor and cruelty tend frequently to overturn the government of feeble princes, it is unfortunately too true that, steadily employed and combined with vigilance and courage, they are often the safest policy of despotism. A single suspicion in the dark bosom of Henry VII., a single cloud of wayward humor in his son, would have been sufficient to send the proudest peer of England to the dungeon and the scaffold. Thus a life of eminent services in the field, and of unceasing compliance in council, could not rescue the duke of Norfolk from the effects of a dislike which we can not even explain. Nor were the nobles of this age more held in subjection by terror than by the still baser influence of gain. Our law of forfeiture was well devised to stimulate as well as to deter; and Henry VIII., better pleased to slaughter the prey than to gorge himself with the carcass, distributed the spoils it brought him among those who had helped in the chase. The dissolution of monasteries opened a more abundant source of munificence; every courtier, every peer, looked for an increase of wealth from grants of ecclesiastical estates, and naturally thought that the king's favor would most readily be gained by an implicit conformity to his will. Nothing, however, seems more to have sustained the arbitrary rule of Henry VIII. than the jealousy of the two religious parties formed in his time, and who, for all the latter years of his life, were maintaining a doubtful and emulous contest for his favor. But this religious contest, and the ultimate establishment of the Reformation, are events far too important, even in a constitutional history, to be treated in a cursory manner; and as, in order to avoid transitions, I have purposely kept them out of sight in the present chapter, they will form the proper subject of the next.

NOTE TO CHAPTER I.

STATUTE OF FINES (p. 15).

The intention and effect of this statute seem not to have been justly apprehended. In the first place, it is remarkable that the statute of Henry VII. is merely a transcript, with very little variation, from one of Richard III., which is actually printed in most editions. It was re-enacted, as we must presume, in order to obviate any doubt, however ill-grounded, which might hang upon the validity of Richard's laws. Thus vanish at once into air the deep policy of Henry VII. and his insidious schemes of leading on a prodigal aristocracy to its ruin. It is surely strange that those who have extolled this sagacious monarch for breaking the fetters of landed property (though many of them were lawyers) should never have observed that whatever credit might be due for the innovation should redound to the honor of the unfortunate usurper. But Richard, in truth, had no leisure for such long-sighted projects of strengthening a throne for his posterity which he could not preserve for himself. His law, and that of his successor, had a different object in view.

It would be useless to some readers, and perhaps disgusting to others, especially in the very outset of this work, to enter upon the history of the English law as to the power of alienation. But I can not explain the present subject without mentioning that by a statute in the reign of Edward I., commonly called *de donis conditionalibus*, lands given to a man and the heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue or from those who were to succeed them. Such lands were also not subject to forfeiture for treason or felony; and more, perhaps, upon this account than from any more enlarged principle, these entails were not viewed with favor by the courts of justice. Several attempts were successfully made to relax their strictness; and finally, in the reign of Edward IV., it was held by the judges in the famous case of Taltarum, that a tenant in tail might, by what is called suffering a common recovery—that is, by means of a fictitious process of law—divest all those who were to come after him of their succession, and become owner of the fee simple. Such a decision was certainly far beyond the sphere of judicial authority. The legislature, it was probably suspected, would not have consented to infringe a statute which they reckoned the safeguard of their families. The law, however, was laid down by the judges; and in those days the appellant jurisdiction of the house of lords, by means of which the aristocracy might have indignantly reversed the insidious decision, had gone wholly into disuse. It became by degrees a fundamental principle, that an estate in tail can be barred by a common recovery; nor is it possible by any legal subtlety to deprive the tenant of this control over his estate. Schemes were, indeed, gradually devised, which to a limited extent have restrained the power of alienation; but these do not belong to our subject.

The real intention of these statutes of Richard and Henry was not to give the tenant in tail a greater power over his estate (for it is by no means clear that the words enable him to bar his issue by levying a fine; and when a decision to that effect took place long afterward (19 H. 8), it was with such difference of opinion that it was thought necessary to confirm the interpretation by a new act of parliament); but rather, by establishing a short term of prescription, to put a check on the suits for recovery of lands, which, after times of so much violence and disturbance, were naturally springing up in the courts. It is the usual policy of governments to favor possession; and on this principle the statute enacts that a fine levied with proclamations in a public court of justice shall after five years, except in particular circumstances, be a bar to all claims upon lands. This was its main scope; the liberty of alienation was neither necessary, nor probably intended to be given.*

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* For these observations on the statute of Fines I am principally indebted to Reeves's History of the English Law (iv., 133), a work, especially in the latter volumes, of great research and judgment; a continuation of which, in the same spirit and with the same qualities, would be a valuable accession not only to the lawyer's but philosopher's library. That entails had been defeated by means of a common recovery before the statute, had been remarked by former writers, and is indeed obvious; but the subject was never put in so clear a light as by Mr. Reeves.

The principle of breaking down the statute *de donis* was so little established, or consistently acted upon, in this reign, that in 11 H. 7, the judges held that the donor of an estate-tail might restrain the tenant from suffering a recovery. Id., p. 159, from the Year-book.

CHAPTER II.

ON THE ENGLISH CHURCH UNDER HENRY VIII., EDWARD VI., AND MARY.

§ 1. State of Public Opinion as to Religion. § 2. Henry VIII.'s Controversy with Luther. § 3. His Divorce from Catherine. § 4. Separation from the Church of Rome. § 5. Dissolution of Monasteries. § 6. Progress of the Reformed Doctrine in England. § 7. Its Establishment under Edward. § 8. Sketch of the chief Points of Difference between the two Religions. § 9. Opposition made by part of the Nation. § 10. Cranmer. His Moderation in introducing Changes not acceptable to the Zealots. § 11. Mary. Persecution under her. § 12. Its effect rather favorable to Protestantism.

§ 1. No revolution has ever been more gradually prepared than that which separated almost one half of Europe from the communion of the Roman see; nor were Luther and Zwingle any more than occasional instruments of that change, which, had they never existed, would at no great distance of time have been effected under the names of some other reformers. At the beginning of the sixteenth century the learned doubtfully and with caution, the ignorant with zeal and eagerness, were tending to depart from the faith and rites which authority prescribed. But probably not even Germany was so far advanced on this course as England. Almost a hundred and fifty years before Luther nearly the same doctrines as he taught had been maintained by Wicliffe, whose disciples, usually called Lollards, lasted as a numerous, though obscure and proscribed sect, till, aided by the confluence of foreign streams, they swelled into the Protestant Church of England. We hear, indeed, little of them during some part of the fifteenth century, for they generally shunned persecution; and it is chiefly through records of persecution that we learn the existence of heretics. But immediately before the name of Luther was known they seem to have become more numerous, or to have attracted more attention; since several persons were burned for heresy, and others abjured their errors, in the first years of Henry VIII.'s reign. Some of these (as usual among ignorant men engaging in religious speculations) are charged with very absurd notions; but it is not so material to observe their particular tenets as the general fact that an inquisitive and sectarian spirit had begun to prevail.

Those who took little interest in theological questions, or

who retained an attachment to the faith in which they had been educated, were in general not less offended than the Lollards themselves with the inordinate opulence and encroaching temper of the clergy. It had been for two or three centuries the policy of our lawyers to restrain these within some bounds. No ecclesiastical privilege had occasioned such dispute or proved so mischievous as the immunity of all tonsured persons from civil punishment for crimes. It was a material improvement in the law under Henry VI. that, instead of being instantly claimed by the bishop on their arrest for any criminal charge, they were compelled to plead their privilege at their arraignment, or after conviction. Henry VII. carried this much farther, by enacting that clerks convicted of felony should be burned in the hand. And in 1513 (4 H. 8), the benefit of clergy was entirely taken away from murderers and highway robbers. An exemption was still preserved for priests, deacons, and subdeacons. But this was not sufficient to satisfy the church, who had been accustomed to shield under the mantle of her immunity a vast number of persons in the lower degrees of orders, or without any orders at all; and had owed no small part of her influence to those who derived so important a benefit from her protection. Hence, besides violent language in preaching against this statute, the convocation attacked one Dr. Standish, who had denied the divine right of clerks to their exemption from temporal jurisdiction. The temporal courts naturally defended Standish; and the parliament addressed the king to support him against the malice of his persecutors. Henry, after a full debate between the opposite parties in his presence, thought his prerogative concerned in taking the same side, and the clergy sustained a mortifying defeat. About the same time a citizen of London, named Hun, having been confined on a charge of heresy in the bishop's prison, was found hanged in his chamber; and though this was asserted to be his own act, yet the bishop's chancellor was indicted for the murder on such vehement presumptions that he would infallibly have been convicted, had the attorney-general thought fit to proceed in the trial. This occurring at the same time with the affair of Standish, furnished each party with an argument; for the clergy maintained that they should have no chance of justice in a temporal court; one of the bishops declaring that the London juries were so prejudiced against the church that they would find Abel guilty of the murder of Cain. Such an admission is of more consequence than whether

Hun died by his own hands or those of a clergyman; and the story is chiefly worth remembering, as it illustrates the popular disposition toward those who had once been the objects of reverence.

§ 2. Such was the temper of England when Martin Luther threw down his gauntlet of defiance against the ancient hierarchy of the catholic church. But, ripe as a great portion of the people might be to applaud the efforts of this reformer, they were viewed with no approbation by their sovereign. Henry had acquired a fair portion of theological learning, and on reading one of Luther's treatises, was not only shocked at its tenets, but undertook to refute them in a formal answer.[1] Kings who divest themselves of their robes to mingle among polemical writers have not perhaps a claim to much deference from strangers; and Luther, intoxicated with arrogance, and deeming himself a more prominent individual among the human species than any monarch, treated Henry, in replying to his book, with the rudeness that characterized his temper. A few years afterward, indeed, he thought proper to write a letter of apology for the language he had held toward the king; but this letter, a strange medley of abjectness and impertinence, excited only contempt in Henry, and was published by him with a severe commentary.[2] Whatever apprehension, therefore, for the future might be grounded on the humor of the nation, no king in Europe appeared so steadfast in his allegiance to Rome as Henry VIII. at the moment when a storm sprang up that broke the chain forever.

§ 3. It is certain that Henry's marriage with his brother's widow was unsupported by any precedent, and that although the pope's dispensation might pass for a cure of all defects, it had been originally considered by many persons in a very different light from those unions which are merely prohibited by the canons. He himself, on coming to the age of fourteen, entered a protest against the marriage which had been celebrated more than two years before, and declared his intention not to confirm it; an act which must naturally be ascribed to his father. It is true that in this very instrument we find no mention of the impediment on

[1] Burnet is confident that the answer to Luther was not written by Henry (vol. iii., 171), and others have been of the same opinion. The king, however, in his answer to Luther's apologetical letter, where this was insinuated, declares it to be his own. From Henry's general character and proneness to theological disputation, it may be inferred that he had at least a considerable share in the work, though probably with the assistance of some who had more command of the Latin language.

[2] Epist. Lutheri ad Henricum regem missa, etc. Lond., 1526. The letter bears date at Wittenberg, Sept. 1, 1525.

the score of affinity; yet it is hard to suggest any other objection, and possibly a common form had been adopted in drawing up the protest. He did not cohabit with Catherine during his father's lifetime. Upon his own accession he was remarried to her; and it does not appear manifest at what time his scruples began, nor whether they preceded his passion for Anne Boleyn. This, however, seems the more probable supposition; yet there can be little doubt that weariness of Catherine's person, a woman considerably older than himself, and unlikely to bear more children, had a far greater effect on his conscience than the study of Thomas Aquinas or any other theologian. It by no means follows from hence that, according to the casuistry of the catholic church and the principles of the canon law, the merits of that famous process were so much against Henry, as, out of dislike to him and pity for his queen, we are apt to imagine, and as the writers of that persuasion have subsequently assumed.

It would be unnecessary to repeat what is told by so many historians, the vacillating and evasive behavior of Clement VII., the assurances he gave the king, and the arts with which he receded from them, the unfinished trial in England before his delegates, Campeggio and Wolsey, the opinions obtained from foreign universities in the king's favor, not always without a little bribery, and those of the same import at home, not given without a little intimidation, or the tedious continuance of the process after its adjournment to Rome. More than five years had elapsed from the first application to the pope, before Henry, though by nature the most uncontrollable of mankind, though irritated by perpetual chicanery and breach of promise, though stimulated by impatient love, presumed to set at naught the jurisdiction to which he had submitted, by a marriage with Anne. Even this was a furtive step; and it was not till compelled by the consequences that he avowed her as his wife, and was finally divorced from Catherine by a sentence of nullity, which would more decently, no doubt, have preceded his second marriage. But, determined as his mind had become, it was plainly impossible for Clement to have conciliated him by any thing short of a decision which he could not utter without the loss of the emperor's favor, and the ruin of his own family's interests in Italy. And even for less selfish reasons it was an extremely embarrassing measure for the pope, in the critical circumstances of that age, to set aside a dispensation granted by his predecessor; knowing that, however some erroneous allegations of fact contained therein

might serve for an outward pretext, yet the principle on which the divorce was commonly supported in Europe went generally to restrain the dispensing power of the holy see. It was the aim of Clement to delude Henry once more by his promises; but this was prevented by the more violent measure into which the cardinals forced him, of a definitive sentence in favor of Catherine, whom the king was required under pain of excommunication to take back as his wife. This sentence of the 23d of March, 1534, proved a declaration of interminable war; and the king resolved to break off all intercourse forever, and trust to his own prerogative and power over his subjects for securing the succession to the crown in the line which he designed.

§ 4. But, long before this final cessation of intercourse with that court, Henry had entered upon a course of measures which would have opposed fresh obstacles to a renewal of the connection. He had found a great part of his subjects in a disposition to go beyond all he could wish in sustaining his quarrel, not in this instance from mere terror, but because a jealousy of ecclesiastical power and of the Roman court had long been a sort of national sentiment in England. The pope's avocation of the process to Rome, by which his duplicity and alienation from the king's side were made evident, and the disgrace of Wolsey, took place in the summer of 1529. The parliament which met soon afterward was continued through several sessions (an unusual circumstance), till it completed the separation of this kingdom from the supremacy of Rome. In the progress of ecclesiastical usurpation, the papal and episcopal powers had lent mutual support to each other; both consequently were involved in the same odium, and had become the object of restrictions in a similar spirit. Warm attacks were made on the clergy by speeches in the commons, which bishop Fisher severely reprehended in the upper house. This provoked the commons to send a complaint to the king by their speaker, demanding reparation; and Fisher explained away the words that had given offense. An act passed to limit the fees on probates of wills, a mode of ecclesiastical extortion much complained of, and upon mortuaries. The next proceeding was of a far more serious nature. It was pretended that Wolsey's exercise of authority as papal legate contravened a statute of Richard II., and that both himself and the whole body of the clergy, by their submission to him, had incurred the penalties of a præmunire, that is, the forfeiture of their movable estate, besides imprisonment at discretion. These old statutes in re-

straint of the papal jurisdiction had been so little regarded, and so many legates had acted in England without objection, that Henry's prosecution of the church on this occasion was extremely harsh and unfair. The clergy, however, now felt themselves to be the weaker party. In convocation they implored the king's clemency, and obtained it by paying a large sum of money. In their petition he was styled the protector and supreme head of the church and clergy of England. Many of that body were staggered at the unexpected introduction of a title that seemed to strike at the supremacy they had always acknowledged in the Roman see. And in the end it passed only with a very suspicious qualification, "so far as is permitted by the law of Christ." Henry had previously given the pope several intimations that he could proceed in his divorce without him. For, besides a strong remonstrance by letter from the temporal peers as well as bishops against the procrastination of sentence in so just a suit, the opinions of English and foreign universities had been laid before both houses of parliament and of convocation, and the divorce approved without difficulty in the former, and by a great majority in the latter. These proceedings took place in the first months of 1531, while the king's ambassadors at Rome were still pressing for a favorable sentence, though with diminished hopes. Next year the annats, or first-fruits of benefices, a constant source of discord between the nations of Europe and their spiritual chief, were taken away by act of parliament; but with a remarkable condition, that if the pope would either abolish the payment of annats, or reduce them to a moderate burden, the king might declare before the next session, by letters patent, whether this act, or any part of it, should be observed. It was accordingly confirmed by letters patent more than a year after it received the royal assent.

It is difficult for us to determine whether the pope, by conceding to Henry the great object of his solicitude, could in this stage have not only arrested the progress of the schism, but recovered his former ascendency over the English church and kingdom. But probably he could not have done so in its full extent. Sir Thomas More, who had rather complied than concurred with the proceedings for a divorce (though his acceptance of the great seal on Wolsey's disgrace would have been inconsistent with his character, had he been altogether opposed in conscience to the king's measures), now thought it necessary to resign, when the papal authority was steadily, though gradually, assailed. In the next session an

act was passed to take away all appeals to Rome from ecclesiastical courts, which annihilated at one stroke the jurisdiction built on long usage and on the authority of the false decretals. This law rendered the king's second marriage, which had preceded it, secure from being annulled by the papal court. Henry, however, still advanced very cautiously, and on the death of Warham, archbishop of Canterbury, not long before this time, applied to Rome for the usual bulls in behalf of Cranmer, whom he nominated to the vacant see. These were the last bulls obtained, and probably the last instance of any exercise of the papal supremacy in this reign. An act followed in the next session, that bishops elected by their chapter on a royal recommendation should be consecrated, and archbishops receive the pall, without suing for the pope's bulls. All dispensations and licenses hitherto granted by that court were set aside by another statute, and the power of issuing them in lawful cases transferred to the archbishop of Canterbury. The king is in this act recited to be the supreme head of the church of England, as the clergy had two years before acknowledged in convocation. But this title was not formally declared by parliament to appertain to the crown till the ensuing session of parliament.

By these means was the church of England altogether emancipated from the superiority of that of Rome. For as to the Pope's merely spiritual primacy and authority in matters of faith, which are, or at least were, defended by Catholics of the Gallican or Cisalpine school on quite different grounds from his jurisdiction or his legislative power in points of discipline, they seem to have attracted little peculiar attention at the time, and to have dropped off as a dead branch, when the axe had lopped the fibres that gave it nourishment. Like other momentous revolutions, this divided the judgment and feelings of the nation. In the previous affair of Catherine's divorce, generous minds were more influenced by the rigor and indignity of her treatment than by the king's inclinations, or the venal opinions of foreign doctors in law. Bellay, bishop of Bayonne, the French ambassador at London, wrote home in 1528 that a revolt was apprehended from the general unpopularity of the divorce. Much difficulty was found in procuring the judgments of Oxford and Cambridge against the marriage; which was effected in the former case, as is said, by excluding the masters of arts, the younger and less worldly part of the university, from their right of suffrage. Even so late as

1532, in the pliant house of commons, a member had the boldness to move an address to the king that he would take back his wife. And this temper of the people seems to have been the great inducement with Henry to postpone any sentence by a domestic jurisdiction, so long as a chance of the pope's sanction remained.

The aversion entertained by a large part of the community, and especially of the clerical order, toward the divorce, was not perhaps so generally founded upon motives of justice and compassion as on the obvious tendency which its prosecution latterly manifested to bring about a separation from Rome. Though the principal Lutherans of Germany were far less favorably disposed to the king in their opinions on this subject than the catholic theologians, holding that the prohibition of marrying a brother's widow in the Levitical law was not binding on Christians, or at least that the marriage ought not to be annulled after so many years' continuance, yet in England the interests of Anne Boleyn and of the Reformation were considered as the same. She was herself strongly suspected of an inclination to the new tenets; and her friend Cranmer had been the most active person both in promoting the divorce and the recognition of the king's supremacy. The latter was, as I imagine, by no means unacceptable to the nobility and gentry, who saw in it the only effectual method of cutting off the papal exactions that had so long impoverished the realm; nor yet to the citizens of London and other large towns, who, with the same dislike of the Roman court, had begun to acquire some taste for the protestant doctrine. But the common people, especially in remote countries, had been used to an implicit reverence for the holy see, and had suffered comparatively little by its impositions. They looked up also to their own teachers as guides in faith; and the main body of the clergy were certainly very reluctant to tear themselves, at the pleasure of a disappointed monarch, in the most dangerous crisis of religion, from the bosom of catholic unity. They complied indeed with all the measures of government far more than men of rigid conscience could have endured to do; but many, who wanted the courage of More and Fisher, were not far removed from their way of thinking.[3] This repugnance to

[3] Strype, passim. Tunstal, Gardiner, and Bonner wrote in favor of the royal supremacy; all of them, no doubt, insincerely. The first of these has escaped severe censure by the mildness of his general character, but was full as much a temporizer as Cranmer. But the history of this period has been written with such undisguised partiality by Burnet and Strype on the one hand, and lately by Dr. Lingard on the other, that it is almost amusing to find the most opposite conclusions and general

so great an alteration showed itself above all in the monastic orders, some of whom by wealth, hospitality, and long-established dignity, others by activity in preaching and confessing, enjoyed a very considerable influence over the poorer class. But they had to deal with a sovereign whose policy as well as temper dictated that he had no safety but in advancing; and their disaffection to his government, while it overwhelmed them in ruin, produced a second grand innovation in the ecclesiastical polity of England.

§ 5. The enormous, and in a great measure ill-gotten, opulence of the regular clergy had long since excited jealousy in every part of Europe. Though the statutes of mortmain under Edward I. and Edward III. had put some obstacle to its increase, yet, as these were eluded by licenses of alienation, a larger proportion of landed wealth was constantly accumulating in hands which lost nothing that they had grasped. A writer much inclined to partiality toward the monasteries says that they held not one-fifth part of the kingdom; no insignificant patrimony! He adds, what may probably be true, that through granting easy leases they did not enjoy more than one-tenth in value. These vast possessions were very unequally distributed among four or five hundred monasteries. Some abbots, as those of Reading, Glanstonbury, and Battle, lived in princely splendor, and were in every sense the spiritual peers and magnates of the realm. In other foundations the revenues did little more than afford a subsistence for the monks and defray the needful expenses. As they were in general exempted from episcopal visitation, and intrusted with the care of their own discipline, such abuses had gradually prevailed and gained strength by connivance as we may naturally expect in corporate bodies of men leading almost of necessity useless and indolent lives, and in whom very indistinct views of moral obligations were combined with a great facility of violating them. The vices that for many ages had been supposed to haunt the monasteries had certainly not left their precincts in that of Henry VIII. Wolsey, as papal legate, at the instigation of Fox, bishop of Hereford, a favorer of the Reformation, commenced a visitation of the professed as well as secular clergy in 1523, in consequence of the general complaint against their manners. This great minister, though not perhaps very rigid as to the morality of the church, was

results from nearly the same premises. Collier, though with many prejudices of his own, is, all things considered, the fairest of our ecclesiastical writers as to this reign.

the first who set an example of reforming monastic foundations in the most efficacious manner, by converting their revenues to different purposes. Full of anxious zeal for promoting education, the noblest part of his character, he obtained bulls from Rome suppressing many convents (among which was that of St. Frideswide at Oxford), in order to erect and endow a new college in that university, his favorite work, which after his fall was more completely established by the name of Christ Church. A few more were afterward extinguished through his instigation; and thus the prejudice against interference with this species of property was somewhat worn off, and men's minds gradually prepared for the sweeping confiscations of Cromwell. The king, indeed, was abundantly willing to replenish his exchequer by violent means, and to avenge himself on those who gainsaid his supremacy; but it was this able statesman who, prompted both by the natural appetite of ministers for the subject's money, and, as has been generally surmised, by a secret partiality toward the Reformation, devised and carried on with complete success, if not with the utmost prudence, a measure of no inconsiderable hazard and difficulty. For such it surely was under a system of government which rested so much on antiquity, and in spite of the peculiar sacredness which the English attach to all freehold property, to annihilate so many prescriptive baronial tenures, the possessors whereof composed more than a third part of the house of lords, and to subject so many estates which the law had rendered inalienable, to maxims of escheat and forfeiture that had never been held applicable to their tenure. But for this purpose it was necessary, by exposing the gross corruptions of monasteries, both to intimidate the regular clergy and to excite popular indignation against them. It is not to be doubted that in the visitation of these foundations under the direction of Cromwell, as lord vicegerent of the king's ecclesiastical supremacy, many things were done in an arbitrary manner, and much was unfairly represented. Yet the reports of these visitors are so minute and specific that it is rather a preposterous degree of incredulity to reject their testimony whenever it bears hard on the regulars. It is always to be remembered that the vices to which they bear witness are not only probable from the nature of such foundations, but are imputed to them by the most respectable writers of preceding ages. Nor do I find that the reports of this visitation were impeached for general falsehood in that age, whatever exaggeration there might be in particular cases. And

surely the commendation bestowed on some religious houses as pure and unexceptionable, may afford a presumption that the censure of others was not an indiscriminate prejudging of their merits.

The dread of these visitors soon induced a number of abbots to make surrenders to the king; a step of very questionable legality. But in the next session the smaller convents, whose revenues were less than £200 a year, were suppressed by act of parliament to the number of three hundred and seventy-six, and their estates vested in the crown. This summary spoliation led to the great northern rebellion soon afterward. It was, in fact, not merely to wound the people's strongest impressions of religion, and especially those connected with their departed friends for whose souls prayers were offered in the monasteries, but to deprive the indigent in many places of succor, and the better rank of hospitable reception. This of course was experienced in a far greater degree at the dissolution of the larger monasteries, which took place in 1540. But Henry having entirely subdued the rebellion, and being now exceedingly dreaded by both the religious parties, this measure produced no open resistance, though there seems to have been less pretext for it on the score of immorality and neglect of discipline than was found for abolishing the smaller convents. These great foundations were all surrendered; a few excepted, which, against every principle of received law, were held to fall by the attainder of their abbots for high treason. Parliament had only to confirm the king's title arising out of these surrenders and forfeitures. Some historians assert the monks to have been turned adrift with a small sum of money. But it rather appears that they generally received pensions not inadequate, and which are said to have been pretty faithfully paid. These, however, were voluntary gifts on the part of the crown. For the parliament which dissolved the monastic foundations, while it took abundant care to preserve any rights of property which private persons might enjoy over the estates thus escheated to the crown, vouchsafed not a word toward securing the slightest compensation to the dispossessed owners.

The fall of the mitred abbots changed the proportions of the two estates which constitute the upper house of parliament. Though the number of abbots and priors to whom writs of summons were directed varied considerably in different parliaments, they always, joined to the twenty-one bishops, preponderated over the temporal peers. It was no

longer possible for the prelacy to offer an efficacious opposition to the reformation they abhorred. Their own baronial tenure, their high dignity as legislative councilors of the land, remained; but, one branch as ancient and venerable as their own thus lopped off, the spiritual aristocracy was reduced to play a very secondary part in the councils of the nation. Nor could the Protestant religion have easily been established by legal methods under Edward and Elizabeth without this previous destruction of the monasteries. I must own myself of opinion, both that the abolition of monastic institutions might have been conducted in a manner consonant to justice as well as policy, and that Henry's profuse alienation of the abbey lands, however illaudable in its motive, has proved upon the whole more beneficial to England than any other disposition would have turned out. I can not, until some broad principle is made more obvious than it ever has yet been, do such violence to all common notions on the subject, as to attach an equal inviolability to private and corporate property. In estates held, as we call it, in mortmain, there is no intercommunity, no natural privity of interest, between the present possessor and those who may succeed him; and as the former can not have any pretext for complaint, if, his own rights being preserved, the legislature should alter the course of transmission after his decease, so neither is any hardship sustained by others, unless their succession has been already designated or rendered probable. Corporate property therefore appears to stand on a very different footing from that of private individuals; and while all infringements of the established privileges of the latter are to be sedulously avoided, and held justifiable only by the strongest motives of public expediency, we can not but admit the full right of the legislature to new-mold and regulate the former, in all that does not involve existing interests, upon far slighter reasons of convenience. If Henry had been content with prohibiting the profession of religious persons for the future, and had gradually diverted their revenues instead of violently confiscating them, no Protestant could have found it easy to censure his policy.

It is indeed impossible to feel too much indignation at the spirit in which these proceedings were conducted. Besides the hardship sustained by so many persons turned loose upon society, for whose occupations they were unfit, the indiscriminate destruction of convents produced several public mischiefs. The visitors themselves strongly interceded for the nunnery of Godstow, as irreproachably managed, and an ex-

cellent place of education; and no doubt some other foundations should have been preserved for the same reason. Latimer, who could not have a prejudice on that side, begged earnestly that the priory of Malvern might be spared for the maintenance of preaching and hospitality. It was urged for Hexham abbey that, there not being a house for many miles in that part of England, the country would be in danger of going to waste. And the total want of inns in many parts of the kingdom must have rendered the loss of these hospitable places of reception a serious grievance. These, and probably other reasons, ought to have checked the destroying spirit of reform in its career, and suggested to Henry's councilors that a few years would not be ill consumed in contriving new methods of attaining the beneficial effects which monastic institutions had not failed to produce, and in preparing the people's minds for so important an innovation.

The suppression of monasteries poured in an instant such a torrent of wealth upon the crown as has seldom been equaled in any country by the confiscations following a subdued rebellion. The clear yearly value was rated at £131,607; but was in reality, if we believe Burnet, ten times as great; the courtiers undervaluing those estates in order to obtain grants or sales of them more easily. It is certain, however, that Burnet's supposition errs extravagantly on the other side. The movables of the smaller monasteries alone were reckoned at £100,000; and as the rents of these were less than a fourth of the whole, we may calculate the aggregate value of movable wealth in the same proportion. All this was enough to dazzle a more prudent mind than that of Henry, and to inspire those sanguine dreams of inexhaustible affluence with which private men are so often filled by sudden prosperity.

The greater part of these immense endowments was dissipated in profuse grants to the courtiers, who frequently contrived to veil their acquisitions under cover of a purchase from the crown. It has been surmised that Cromwell, in his desire to promote the Reformation, advised the king to make this partition of abbey lands among the nobles and gentry, either by grant, or by sale on easy terms, that, being thus bound by the sure ties of private interest, they might always oppose any return toward the dominion of Rome. In Mary's reign, accordingly, her parliament, so obsequious in all matters of religion, adhered with a firm grasp to the possession of church lands; nor could the papal supremacy be re-established until a sanction was given to their enjoyment.

And we may ascribe part of the zeal of the same class in bringing back and preserving the reformed church under Elizabeth to a similar motive; not that these gentlemen were hypocritical pretenders to a belief they did not entertain, but that, according to the general laws of human nature, they gave a readier reception to truths which made their estates more secure.

But if the participation of so many persons in the spoils of ecclesiastical property gave stability to the new religion, by pledging them to its support, it was also of no slight advantage to our civil constitution, strengthening, and as it were infusing new blood into, the territorial aristocracy, who were to withstand the enormous prerogative of the crown. For if it be true, as surely it is, that wealth is power, the distribution of so large a portion of the kingdom among the nobles and gentry, the elevation of so many new families, and the increased opulence of the more ancient, must have sensibly affected their weight in the balance. Those families indeed, within or without the bounds of the peerage, which are now deemed the most considerable, will be found, with no great number of exceptions, to have first become conspicuous under the Tudor line of kings; and, if we could trace the titles of their estates, to have acquired no small portion of them, mediately or immediately, from monastic or other ecclesiastical foundations.

A very ungrounded prejudice had long obtained currency, and notwithstanding the contradiction it has experienced in our more accurate age, seems still not eradicated, that the alms of monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief, now so much the topic of complaint, was rendered necessary by the dissolution of those beneficent foundations. There can be no doubt that many of the impotent poor derived support from their charity. But the blind eleemosynary spirit inculcated by the Romish church is notoriously the cause, not the cure, of beggary and wretchedness. The monastic foundations, scattered in different counties, but by no means at regular distances, and often in sequestered places, could never answer the end of local and limited succor, meted out in just proportion to the demands of poverty. Their gates might indeed be open to those who knocked at them for alms, and came in search of streams that must always be too scanty for a thirsty multitude. Nothing could have a stronger tendency to promote that vagabond mendicity, which unceasing and very severe statutes were enacted to repress. It was and

must always continue a hard problem, to discover the means of rescuing those whom labor can not maintain from the last extremities of helpless suffering. The regular clergy were in all respects ill fitted for this great office of humanity. Even while the monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature, by means of regular collections, which in the course of a long series of statutes, ending in the 43d of Elizabeth, were almost insensibly converted into compulsory assessments.[4] It is by no means probable that, however some in particular districts may have had to lament the cessation of hospitality in the convents, the poor in general, after some time, were placed in a worse condition by their dissolution; nor are we to forget that the class to whom the abbey lands have fallen have been distinguished at all times, and never more than in the first century after that transference of property, for their charity and munificence.

These two great political measures—the separation from the Roman see, and the suppression of monasteries—so broke the vast power of the English clergy, and humbled their spirit, that they became the most abject of Henry's vassals, and dared not offer any steady opposition to his caprice, even when it led him to make innovations in the essential parts of their religion. It is certain that a large majority of that order would gladly have retained their allegiance to Rome, and that they viewed with horror the downfall of the monasteries. In rending away so much that had been incorporated with the public faith Henry seemed to prepare the road for the still more radical changes of the reformers. These, a numerous and increasing sect, exulted by turns in the innovations he promulgated, lamented their dilatoriness and imperfection, or trembled at the reaction of his bigotry against themselves. Trained in the school of theological controversy, and drawing from those bitter waters fresh aliment for his sanguinary and imperious temper, he displayed the impartiality of his intolerance by alternately persecuting the two conflicting parties. We all have read how three persons convicted of disputing his supremacy, and three deniers of transubstantiation, were drawn on the same hurdle to execution. But the doctrinal system adopted by Henry

[4] The first act for the relief of the impotent poor passed in 1535 (27 H. 8, c. 25). By this statute no alms were allowed to be given to beggars, on pain of forfeiting ten times the value; but a collection was to be made in every parish. The compulsory contributions, properly speaking, began in 1572 (14 Eliz., c. 5). But by an earlier statute, 1 Edw. 6, c. 3, the bishop was empowered to proceed in his court against such as should refuse to contribute, or dissuade others from doing so.

in the latter years of his reign, varying, indeed, in some measure from time to time, was about equally removed from popish and protestant orthodoxy. The corporal presence of Christ in the consecrated elements was a tenet which no one might dispute without incurring the penalty of death by fire; and the king had a capricious partiality to the Romish practice in those very points where a great many real catholics on the Continent were earnest for its alteration, the communion of the laity by bread alone, and the celibacy of the clergy. But in several other respects he was wrought upon by Cranmer to draw pretty near to the Lutheran creed, and to permit such explications to be given in the books set forth by his authority, "The Institution," and the "Erudition of a Christian Man," as, if they did not absolutely proscribe most of the ancient opinions, threw at best much doubt upon them, and gave intimations which the people, now become attentive to these questions, were acute enough to interpret.

§ 6. It was natural to suspect, from the previous temper of the nation, that the revolutionary spirit which blazed out in Germany would spread rapidly over England. Books printed in Germany or in the Flemish provinces, where at first the administration connived at the new religion, were imported and read with that eagerness and delight which always compensate the risk of forbidden studies. Wolsey, who had no turn toward persecution, contented himself with ordering heretical writings to be burned, and strictly prohibiting their importation. But to withstand the course of popular opinion is always like a combat against the elements in commotion; nor is it likely that a government far more steady and unanimous than that of Henry VIII. could have effectually prevented the diffusion of protestantism. And the severe punishment of many zealous reformers in the subsequent part of this reign tended, beyond a doubt, to excite a favorable prejudice for men whose manifest sincerity, piety, and constancy in suffering, were as good pledges for the truth of their doctrine, as the people had been always taught to esteem the same qualities in the legends of the early martyrs.

One of the books originally included in the list of proscription among the writings of Luther and the foreign protestants was a translation of the New Testament into English by Tyndale, printed at Antwerp in 1526. A complete version of the Bible, partly by Tyndale, and partly by Coverdale, appeared, perhaps at Hamburg, in 1535; a second

edition, under the name of Matthews, following in 1537; and as Cranmer's influence over the king became greater, and his aversion to the Roman church more inveterate, so material a change was made in the ecclesiastical policy of this reign as to direct the Scriptures in this translation (but with corrections in many places) to be set up in parish churches, and permit them to be publicly sold. This measure had a strong tendency to promote the Reformation, especially among those who were capable of reading; not, surely, that the controverted doctrines of the Romish church are so palpably erroneous as to bear no sort of examination, but because such a promulgation of the Scriptures at that particular time seemed both tacitly to admit the chief point of contest, that they were the exclusive standard of Christian faith, and to lead the people to interpret them with that sort of prejudice which a jury would feel in considering evidence that one party in a cause had attempted to suppress; a danger which those who wish to restrain the course of free discussion without very sure means of success will in all ages do well to reflect upon.

The great change of religious opinions was not so much effected by reasoning on points of theological controversy, upon which some are apt to fancy it turned, as on a persuasion that fraud and corruption pervaded the established church. The pretended miracles, which had so long held the understanding in captivity, were wisely exposed to ridicule and indignation by the government. Plays and interludes were represented in churches, of which the usual subject was the vices and corruptions of the monks and clergy. These were disapproved of by the graver sort, but no doubt served a useful purpose. The press sent forth its light hosts of libels; and though the catholic party did not fail to try the same means of influence, they had both less liberty to write as they pleased, and fewer readers than their antagonists.

§ 7. In this feverish state of the public mind on the most interesting subject ensued the death of Henry VIII., who had excited and kept it up. More than once, during the latter part of his capricious reign, the popish party, headed by Norfolk and Gardiner, had gained an ascendant, and several persons had been burned for denying transubstantiation. But at the moment of his decease Norfolk was a prisoner attainted of treason, Gardiner in disgrace, and the favor of Cranmer at its height. It is said that Henry had meditated some further changes in religion. Of his executors, the great-

er part, as their subsequent conduct evinces, were nearly indifferent to the two systems, except so far as more might be gained by innovation. But Somerset, the new protector, appears to have inclined sincerely toward the Reformation, though not wholly uninfluenced by similar motives. His authority readily overcame all opposition in the council; and it was soon perceived that Edward, whose singular precocity gave his opinions in childhood an importance not wholly ridiculous, had imbibed a steady and ardent attachment to the new religion, which probably, had he lived longer, would have led him both to diverge farther from what he thought an idolatrous superstition, and to have treated its adherents with severity. Under his reign, accordingly, a series of alterations in the tenets and homilies of the English church were made, the principal of which I shall point out, without following a chronological order, or adverting to such matters of controversy as did not produce a sensible effect on the people.

§ 8.—I. It was obviously among the first steps required in order to introduce a mode of religion at once more reasonable and more earnest than the former, that the public services of the church should be expressed in the mother-tongue of the congregation. The Latin ritual had been unchanged ever since the age when it was vernacular; partly through a sluggish dislike of innovation, but partly also because the mysteriousness of an unknown dialect served to impose on the vulgar, and to throw an air of wisdom around the priesthood. Yet what was thus concealed would have borne the light. Our own liturgy, so justly celebrated for its piety, elevation, and simplicity, is in great measure a translation from the catholic services, or more properly from those which had been handed down from a more primitive age; those portions, of course, being omitted which had relation to different principles of worship. In the second year of Edward's reign, the reformation of the public service was accomplished, and an English liturgy compiled, not essentially different from that in present use.

II. No part of exterior religion was more prominent or more offensive to those who had imbibed a protestant spirit than the worship, or at least veneration, of images, which in remote and barbarous ages had given excessive scandal both in the Greek and Latin churches, though long fully established in the practice of each. The populace in towns where the reformed tenets prevailed began to pull them down in the very first days of Edward's reign; and after a little pre-

tense at distinguishing those which had not been abused, orders were given that all images should be taken away from churches. But this order was executed with a rigor which lovers of art and antiquity have long deplored. Our churches bear witness to the devastation committed in the wantonness of triumphant reform by defacing statues and crosses on the exterior of buildings intended for worship, or windows and monuments within. Missals and other books dedicated to superstition perished in the same manner. Altars were taken down, and a great variety of ceremonies abrogated, such as the use of incense, tapers, and holy water; and though more of these were retained than eager innovators could approve, the whole surface of religious ordinances, all that is palpable to common minds, underwent a surprising transformation.

III. But this change in ceremonial observances and outward show was trifling when compared to that in the objects of worship, and in the purposes for which they were addressed. Those who have visited some catholic temples, and attended to the current language of devotion, must have perceived, what the writings of apologists or decrees of councils will never enable them to discover, that the saints, but more especially the Virgin, are almost exclusively the *popular* deities of that religion. All this polytheism was swept away by the reformers; and in this may be deemed to consist the most specific difference of the two systems. Nor did they spare the belief in purgatory, that unknown land which the hierarchy swayed with so absolute a rule, and to which the earth had been rendered a tributary province. Yet in the first liturgy put forth under Edward the prayers for departed souls were retained; whether out of respect to the prejudices of the people or to the immemorial antiquity of the practice. But such prayers, if not necessarily implying the doctrine of purgatory (which yet in the main they appear to do), are at least so closely connected with it that the belief could never be eradicated while they remained. Hence in the revision of the liturgy, four years afterward, they were laid aside; and several other changes made, to eradicate the vestiges of the ancient superstition.

IV. Auricular confession, as commonly called, or the private and special confession of sins to a priest for the purpose of obtaining his absolution, an imperative duty in the church of Rome, and preserved as such in the statute of the six articles, and in the religious codes published by Henry VIII., was left to each man's discretion in the new order; a judi-

cious temperament, which the reformers would have done well to adopt in some other points. And thus, while it has never been condemned in our church, it went without dispute into complete neglect.

V. It has very rarely been the custom of theologians to measure the importance of orthodox opinions by their effect on the lives and hearts of those who adopt them; nor was this predilection for speculative above practical doctrines ever more evident than in the leading controversy of the sixteenth century, that respecting the Lord's Supper. Four principal theories, to say nothing of subordinate varieties, divided Europe at the accession of Edward VI. about the sacrament of the Eucharist. (i.) The church of Rome would not depart a single letter from transubstantiation, or the change at the moment of consecration of the substances of bread and wine into those of Christ's body and blood; the accidents, in school language, or sensible qualities of the former remaining, or becoming inherent in the new substance. (ii.) Luther, partly, as it seems, out of his determination to multiply differences with the church, invented a theory somewhat different, usually called consubstantiation, which was adopted in the confession of Augsburg, and to which, at least down to the middle of the eighteenth century, the divines of that communion were much attached. They imagined the two substances to be united in the sacramental elements, so that they might be termed bread and wine, or the body and blood, with equal propriety. But it must be obvious that there is little more than a metaphysical distinction between this doctrine and that of Rome; though, when it suited the Lutherans to magnify rather than dissemble their deviations from the mother church, it was raised into an important difference. (iii.) A simpler and more rational explication occurred to Zwingle and Œcolampadius, from whom the Helvetian protestants imbibed their faith. Rejecting every notion of a real presence, and divesting the institution of all its mystery, they saw only figurative symbols in the elements which Christ had appointed as a commemoration of his death. But this novel opinion excited as much indignation in Luther as in the Romanists. It was indeed a rock on which the Reformation was nearly shipwrecked; since the violent contests which it occasioned, and the narrow intolerance which one side at least displayed throughout the controversy, not only weakened on several occasions the temporal power of the protestant churches, but disgusted many of those who might have inclined toward espousing

their sentiments. (iv.) Besides these three hypotheses, a fourth was promulgated by Martin Bucer of Strasburg, a man of much acuteness, but prone to metaphysical subtilty, and not, it is said, of a very ingenuous character. Bucer, as I apprehend, though his expressions are unusually confused, did not acknowledge a local presence of Christ's body and blood in the elements after consecration—so far concurring with the Helvetians; while he contended that they were really, and without figure, received by the worthy communicant through faith, so as to preserve the belief of a mysterious union, and of what was sometimes called a real presence. Bucer himself came to England early in the reign of Edward, and had a considerable share in advising the measures of reformation. But Peter Martyr, a disciple of the Swiss school, had also no small influence. In the forty-two articles set forth by authority, the real or corporal presence, using these words as synonymous, is explicitly denied. This clause was omitted on the revision of the articles under Elizabeth.

VI. These various innovations were exceedingly inimical to the influence and interests of the priesthood. But that order obtained a sort of compensation in being released from its obligation to celibacy. This obligation, though unwarranted by Scripture, rested on a most ancient and universal rule of discipline; for though the Greek and Eastern churches have always permitted the ordination of married persons, yet they do not allow those already ordained to take wives. No very good reason, however, could be given for this distinction; and the constrained celibacy of the Latin clergy had given rise to mischiefs, of which their general practice of retaining concubines might be reckoned among the smallest. The German protestants soon rejected this burden, and encouraged regular as well as secular priests to marry. Cranmer had himself taken a wife in Germany, whom Henry's law of the six articles, one of which made the marriage of priests felony, compelled him to send away. In the reign of Edward this was justly reckoned an indispensable part of the new Reformation. But the bill for that purpose passed the lords with some little difficulty, nine bishops and four peers dissenting; and its preamble cast such an imputation on the practice it allowed, treating the marriage of priests as ignominious and a tolerated evil, that another act was thought necessary a few years afterward, when the Reformation was better established, to vindicate this right of the protestant church.[5] A great number of the clergy

[5] Stat. 2 & 3 Edw. 6, c. 21; 5 & 6 Edw. 6, c. 12; Burnet, 89.

availed themselves of their liberty; which may probably have had as extensive an effect in conciliating the ecclesiastical profession, as the suppression of monasteries had in rendering the gentry favorable to the new order of religion.

§ 9. But great as was the number of those whom conviction or self-interest enlisted under the protestant banner, it appears plain that the Reformation moved on with too precipitate a step for the majority. The new doctrines prevailed in London, in many large towns, and in the eastern counties. But in the north and west of England the body of the people were strictly catholics. The clergy, though not very scrupulous about conforming to the innovations, were generally averse to most of them. And, in spite of the church lands, I imagine that most of the nobility, if not the gentry, inclined to the same persuasion; not a few peers having sometimes dissented from the bills passed on the subject of religion in this reign, while no sort of disagreement appears in the upper house during that of Mary. In the western insurrection of 1549, which partly originated in the alleged grievance of inclosures, many of the demands made by the rebels go to the entire re-establishment of popery. Those of the Norfolk insurgents, in the same year, whose political complaints were the same, do not, as far as I perceive, show any such tendency. But an historian, whose bias was certainly not unfavorable to protestantism, confesses that all endeavors were too weak to overcome the aversion of the people toward Reformation, and even intimates that German troops were sent for from Calais on account of the bigotry with which the bulk of the nation adhered to the old superstition.[6] This is somewhat an humiliating admission, that the protestant faith was imposed upon our ancestors by a foreign army. The demolition of shrines and images was an overt insult on every catholic heart. Still more were they exasperated at the ribaldry which vulgar protestants uttered against their most sacred mystery. Nor could the people repose much confidence in the judgment and sincerity of their governors, whom they had seen submitting without outward repugnance to Henry's various schemes of religion, and whom they saw every day enriching themselves with the plunder of the church they

[6] Burnet, iii., 190, 196. This seems rather to refer to the upper classes than to the whole people. But at any rate it was an exaggeration of the fact, the protestants being certainly in a much greater proportion. Paget was the adviser of the scheme of sending for German troops in 1549, which, however, was in order to quell a seditious spirit in the nation, not by any means wholly founded upon religious grounds. Strype, xi., 169.

affected to reform. Almost every bishopric was spoiled by their ravenous power in this reign, either through mere alienations, or long leases, or unequal exchanges. Exeter and Llandaff, from being among the richest sees, fell into the class of the poorest. Lichfield lost the chief part of its lands to raise an estate for lord Paget. London, Winchester, and even Canterbury, suffered considerably. The duke of Somerset was much beloved; yet he had given no unjust offense by pulling down some churches in order to erect Somerset House with the materials. He had even projected the demolition of Westminster Abbey, but the chapter averted this outrageous piece of rapacity, sufficient of itself to characterize that age, by the usual method, a grant of some of their estates.

Tolerance in religion, it is well known, so unanimously admitted (at least verbally) even by theologians in the present century, was seldom considered as practicable, much less as a matter of right, during the period of the Reformation. The difference in this respect between the catholics and protestants was only in degree, and in degree there was much less difference than we are apt to believe. The Roman worship was proscribed in England. Many persons were sent to prison for hearing mass, and similar offenses. The princess Mary supplicated in vain to have the exercise of her own religion at home, and Charles V. several times interceded in her behalf; but though Cranmer and Ridley, as well as the council, would have consented to this indulgence, the young king, whose education had unhappily infused a good deal of bigotry into his mind, could not be prevailed upon to connive at such idolatry.

§ 10. The person most conspicuous, though Ridley was perhaps the most learned divine, in molding the faith and discipline of the English church, which has not been very materially altered since his time, was archbishop Cranmer. Few men, about whose conduct there is so little room for controversy upon facts, have been represented in more opposite lights. We know the favoring colors of protestant writers; but turn to the bitter invective of Bossuet, and the patriarch of our reformed church stands forth as the most abandoned of time-serving hypocrites. If, casting away all prejudice on either side, we weigh the character of this prelate in an equal balance, he will appear far indeed removed from the turpitude imputed to him by his enemies, yet not entitled to any extraordinary veneration. Though it is most eminently true of Cranmer, that his faults were al-

ways the effect of circumstances, and not of intention, yet this palliating consideration is rather weakened when we recollect that he consented to place himself in a station where those circumstances occurred. At the time of Cranmer's elevation to the see of Canterbury, Henry, though on the point of separating forever from Rome, had not absolutely determined upon so strong a measure; and his policy required that the new archbishop should solicit the usual bulls from the pope, and take the oath of canonical obedience to him. Cranmer, already a rebel from that dominion in his heart, had recourse to the disingenuous shift of a protest, before his consecration, that "he did not intend to restrain himself thereby from any thing to which he was bound by his duty to God or the king, or from taking part in any reformation of the English church which he might judge to be required." This first deviation from integrity, as is almost always the case, drew after it many others, and began that discreditable course of temporizing and undue compliance to which he was reduced for the rest of Henry's reign. Cranmer's abilities were not perhaps of a high order, or at least they were unsuited to public affairs; but his principal defect was in that firmness by which men of more ordinary talents may insure respect. Nothing could be weaker than his conduct in the usurpation of lady Jane, which he might better have boldly sustained, like Ridley, as a step necessary for the conservation of protestantism, than given into against his conscience, overpowered by the importunities of a misguided boy. Had the malignity of his enemies been directed rather against his reputation than his life, had he been permitted to survive his shame as a prisoner in the Tower, it must have seemed a more arduous task to defend the memory of Cranmer, but his fame has brightened in the fire that consumed him.

Those who, with the habits of thinking that prevail in our times, cast back their eyes on the reign of Edward VI., will generally be disposed to censure the precipitancy, and still more the exclusive spirit, of our principal reformers. But relatively to the course that things had taken in Germany, and to the feverish zeal of that age, the moderation of Cranmer and Ridley, the only ecclesiastics who took a prominent share in these measures, was very conspicuous, and tended above every thing to place the Anglican church in that middle position which it has always preserved between the Roman hierarchy and that of other protestant denominations. Cranmer, during the reign of Henry, had bent, as

usual, to the king's despotic humor, and favored a novel theory of ecclesiastical authority, which resolved all its spiritual as well as temporal powers into the royal supremacy. Accordingly, at the accession of Edward, he himself, and several other bishops, took out commissions to hold their sees during pleasure. But when the necessity of compliance had passed by, they showed a disposition not only to oppose the continual spoliation of church property, but to maintain the jurisdiction which the canon law had conferred upon them. And though, as this papal code did not appear very well adapted to a protestant church, a new scheme of ecclesiastical laws was drawn up, which the king's death rendered abortive, this was rather calculated to strengthen the hands of the spiritual courts than to withdraw any matter from their cognizance.

The policy, or it may be the prejudices, of Cranmer induced him also to retain in the church a few ceremonial usages, which the Helvetic, though not the Lutheran, reformers had swept away, such as the copes and rochets of bishops, and the surplice of officiating priests. It should seem inconceivable that any one could object to these vestments, considered in themselves; far more, if they could answer in the slightest degree the end of conciliating a reluctant people. But this motive, unfortunately, was often disregarded in that age; and indeed in all ages an abhorrence of concession and compromise is a never-failing characteristic of religious factions. The foreign reformers then in England, two of whom, Bucer and Peter Martyr, enjoyed a deserved reputation, expressed their dissatisfaction at seeing these habits retained, and complained, in general, of the backwardness of the English reformation. Calvin and Bullinger wrote from Switzerland in the same strain. Nor was this sentiment by any means confined to strangers. Hooper, an eminent divine, having been elected bishop of Gloucester, refused to be consecrated in the usual dress. It marks, almost ludicrously, the spirit of those times, that, instead of permitting him to decline the station, the council sent him to prison for some time, until by some mutual concessions the business was adjusted. These events it would hardly be worth while to notice in such a work as the present if they had not been the prologue to a long and serious drama.

§ 11. It is certain that the re-establishment of popery on Mary's accession must have been acceptable to a large part, or perhaps to the majority, of the nation. There is reason, however, to believe that the reformed doctrine had made a

real progress in the few years of her brother's reign. The counties of Norfolk and Suffolk, which placed Mary on the throne as the lawful heir, were chiefly protestant, and experienced from her the usual gratitude and good faith of a bigot. Noailles bears witness, in many of his dispatches, to the unwillingness which great numbers of the people displayed to endure the restoration of popery, and to the queen's excessive unpopularity, even before her marriage with Philip had been resolved upon. As for the higher classes, they partook far less than their inferiors in the religious zeal of that age. Henry, Edward, Mary, Elizabeth, found almost an equal compliance with their varying schemes of faith. Yet the larger proportion of the nobility and gentry appear to have preferred the catholic religion. Several peers opposed the bills for reformation under Edward; and others, who had gone along with the current, became active counselors of Mary. Not a few persons of family emigrated in the latter reign; but with the exception of the second earl of Bedford, who suffered a short imprisonment on account of religion, the protestant martyrology contains no confessor of superior rank. The same accommodating spirit characterized, upon the whole, the clergy; and would have been far more general, if a considerable number had not availed themselves of the permission to marry granted by Edward; which led to their expulsion from their cures on his sister's coming to the throne. Yet it was not the temper of Mary's parliaments, whatever pains had been taken about their election, to second her bigotry in surrendering the temporal fruits of their recent schism. The bill for restoring first-fruits and impropriations in the queen's hands to the church passed not without difficulty; and it was found impossible to obtain a repeal of the act of supremacy without the pope's explicit confirmation of the abbey lands to their new proprietors. Even this confirmation, though made through the legate cardinal Pole, by virtue of a full commission, left not unreasonably an apprehension that, on some better opportunity, the imprescriptible nature of church property might be urged against the possessors. With these selfish considerations others of a more generous nature conspired to render the old religion more obnoxious than it had been at the queen's accession. Her marriage with Philip, his encroaching disposition, the arbitrary turn of his counsels, the insolence imputed to the Spaniards who accompanied him, the unfortunate loss of Calais through that alliance, while it thoroughly alienated the kingdom from Mary, created a prejudice against the religion

which the Spanish court so steadily favored. So violent indeed was the hatred conceived by the English nation against Spain during the short period of Philip's marriage with their queen, that it diverted the old channel of public feelings, and almost put an end to that dislike and jealousy of France which had so long existed. For at least a century after this time we rarely find in popular writers any expressions of hostility toward that country; though their national manners, so remote from our own, are not unfrequently the object of ridicule. The prejudices of the populace, as much as the policy of our councilors, were far more directed against Spain.

§ 12. But what had the greatest efficacy in disgusting the English with Mary's system of faith, was the cruelty by which it was accompanied. Though the privy council were in fact continually urging the bishops forward in this prosecution, the latter bore the chief blame, and the abhorrence entertained for them naturally extended to the doctrine they professed. A sort of instinctive reasoning told the people, what the learned on neither side had been able to discover, that the truth of a religion begins to be very suspicious when it stands in need of prisons and scaffolds to eke out its evidences. And as the English were constitutionally humane, and not hardened by continually witnessing the infliction of barbarous punishments, there arose a sympathy for men suffering torments with such meekness and patience, which the populace of some other nations were perhaps less apt to display, especially in executions on the score of heresy. The theologian indeed and the philosopher may concur in deriding the notion that either sincerity or moral rectitude can be the test of truth; yet among the various species of authority to which recourse had been had to supersede or to supply the deficiencies of argument, I know not whether any be more reasonable, and none certainly is so congenial to unsophisticated minds. Many are said to have become protestants under Mary, who, at her coming to the throne, had retained the contrary persuasion. And the strongest proof of this may be drawn from the acquiescence of the great body of the kingdom in the re-establishment of protestantism by Elizabeth, when compared with the seditions and discontent on that account under Edward. The course which this famous princess steered in ecclesiastical concerns, during her long reign, will form the subject of the two ensuing chapters.

CHAPTER III.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING THE ROMAN CATHOLICS.

§ 1. Change of Religion on the Queen's Accession. § 2. Acts of Supremacy and Uniformity. § 3. Restraint of Roman Catholic Worship in the first Years of Elizabeth. § 4. Statute of 15°2. This Act not fully enforced. § 5. Application of the Emperor in behalf of the English Catholics. § 6. Persecution of this Body in the ensuing Period. § 7. Uncertain Succession of the Crown between the families of Scotland and Suffolk. § 8. The Queen's unwillingness to decide this, or to marry. § 9. Imprisonment of Lady Catherine Grey. § 10. Mary Queen of Scotland. § 11. Combination in her favor. § 12. Bull of Pius V. Statutes for the Queen's Security. § 13. Catholics more rigorously treated. § 14. Refugees in the Netherlands. Their Hostility to the Government. § 15. Fresh Laws against the Catholic Worship. Execution of Campian and others. § 16. Defense of the Queen by Burleigh. § 17. Increased Severity of the Government. § 18. Mary. Plot in her favor. Her Execution. Remarks upon it. § 19. Continued Persecution of Roman Catholics. § 20. General Observations.

§ 1. The accession of Elizabeth, gratifying to the whole nation on account of the late queen's extreme unpopularity, infused peculiar joy into the hearts of all well-wishers to the Reformation. Child of that famous marriage which had severed the connection of England with the Roman see, and trained betimes in the learned and reasoning discipline of protestant theology, suspected and oppressed for that very reason by a sister's jealousy, and scarcely preserved from the death which at one time threatened her, there was every ground to be confident that, notwithstanding her forced compliance with the catholic rites during the late reign, her inclinations had continued steadfast to the opposite side. Nor was she long in manifesting this disposition sufficiently to alarm one party, though not entirely to satisfy the other. Her great prudence, and that of her advisers, which taught her to move slowly, while the temper of the nation was still uncertain, and her government still embarrassed with a French war and a Spanish alliance, joined with a certain tendency in her religious sentiments not so thoroughly protestant as had been expected, produced some complaints of delay from the ardent reformers just returned from exile. But she began to make alterations, though not very essential, in the church service; and the bishops must have been well aware of the course she designed to pursue, when they adopted the violent and impolitic resolution of refusing to officiate at her coronation. Her council was formed of a very few

catholics, of several pliant conformists with all changes, and of some known friends to the protestant interest. But two of these, Cecil and Bacon, were so much higher in her confidence, and so incomparably superior in talents to the other councilors, that it was evident which way she must incline. The parliament met about two months after her accession. The creed of parliament from the time of Henry VIII. had been always that of the court; whether it were that elections had constantly been influenced, as we know was sometimes the case, or that men of adverse principles, yielding to the torrent, had left the way clear to the partisans of power. This first, like all subsequent parliaments, was to the full as favorable to protestantism as the queen could desire; the first-fruits of benefices, and, what was far more important, the supremacy in ecclesiastical affairs, were restored to the crown; the laws made concerning religion in Edward's time were re-enacted. These acts did not pass without considerable opposition among the lords; nine temporal peers, besides all the bishops, having protested against the bill of uniformity establishing the Anglican liturgy, though some pains had been taken to soften the passages most obnoxious to catholics. But the act restoring the royal supremacy met with less resistance; whether it were that the system of Henry retained its hold over some minds, or that it did not encroach, like the former, on the liberty of conscience, or that men not overscrupulous were satisfied with the interpretation which the queen caused to be put upon the oath.

Several of the bishops had submitted to the Reformation under Edward VI. But they had acted, in general, so conspicuous a part in the late restoration of popery, that, even amidst so many examples of false profession, shame restrained them from a second apostasy. Their number happened not to exceed sixteen, one of whom was prevailed on to conform; while the rest, refusing the oath of supremacy, were deprived of their bishoprics by the court of ecclesiastical high commission. In the summer of 1559 the queen appointed a general ecclesiastical visitation, to compel the observance of the protestant formularies. It appears from their reports that only about one hundred dignitaries, and eighty parochial priests, resigned their benefices, or were deprived. Men eminent for their zeal in the protestant cause, and most of them exiles during the persecution, occupied the vacant sees. And thus, before the end of 1559, the English church, so long contended for as a prize by the two religions, was lost forever to that of Rome.

§ 2. These two statutes, commonly denominated the *Acts of Supremacy and Uniformity*,[1] form the basis of that restrictive code of laws, deemed by some one of the fundamental bulwarks, by others the reproach of our constitution, which pressed so heavily for more than two centuries upon the adherents to the Romish church. By the former all beneficed ecclesiastics, and all laymen holding office under the crown, were obliged to take the oath of supremacy, renouncing the spiritual as well as temporal jurisdiction of every foreign prince or prelate, on pain of forfeiting their office or benefice; and it was rendered highly penal, and for the third offense treasonable, to maintain such supremacy by writing or advised speaking. The latter statute trenched more on the natural rights of conscience; prohibiting, under pain of forfeiting goods and chattels for the first offense, of a year's imprisonment for the second, and of imprisonment during life for the third, the use by a minister, whether beneficed or not, of any but the established liturgy; and imposed a fine of one shilling on all who should absent themselves from church on Sundays and holydays.[2]

§ 3. This act operated as an absolute interdiction of the catholic rites, however privately celebrated. It has frequently been asserted, that the government connived at the domestic exercise of that religion during these first years of Elizabeth's reign. This may possibly have been the case with respect to some persons of very high rank whom it was inexpedient to irritate. But we find instances of severity toward catholics, even in that early period; and it is evident that their solemn rites were only performed by stealth, and at much hazard. This commencement of persecution induced many catholics to fly beyond the sea, and gave rise to those reunions of disaffected exiles, which never ceased to endanger the throne of Elizabeth.

It can not, as far as appears, be truly alleged that any greater provocation had as yet been given by the catholics than that of pertinaciously continuing to believe and worship as their fathers had done before them. I request those who may hesitate about this, to pay some attention to the order of time, before they form their opinions. The master mover, that became afterward so busy, had not yet put his wires into action. Every prudent man at Rome (and we shall not at least deny that there were such) condemned the precipitate and insolent behavior of Paul IV. toward Elizabeth, as

[1] 1 Eliz., c. 1. See Note at end of chapter, "The Oath of Supremacy."
[2] 1 Eliz., c. 2.

they did most other parts of his administration. Pius IV., the successor of that injudicious old man, aware of the inestimable importance of reconciliation, and suspecting probably that the queen's turn of thinking did not exclude all hope of it, dispatched a nuncio to England, with an invitation to send ambassadors to the council at Trent, and with powers, as is said, to confirm the English liturgy, and to permit double communion; one of the few concessions which the more indulgent Romanists of that age were not very reluctant to make. But Elizabeth had taken her line as to the court of Rome; the nuncio received a message at Brussels, that he must not enter the kingdom; and she was too wise to countenance the impartial fathers of Trent, whose labors had nearly drawn to a close, and whose decisions on the controverted points it had never been very difficult to foretell. I have not found that Pius IV., more moderate than most other pontiffs of the sixteenth century, took any measures hostile to the temporal government of this realm; but the deprived ecclesiastics were not unfairly anxious to keep alive the faith of their former hearers, and to prevent them from sliding into conformity, through indifference and disuse of their ancient rites. The means taken were chiefly the same as had been adopted against themselves, the dispersion of small papers either in a serious or lively strain; but the remarkable position in which the queen was placed rendering her death a most important contingency, the popish party made use of pretended conjurations and prophecies of that event, in order to unsettle the people's minds, and to dispose them to anticipate another reaction. Partly through these political circumstances, but far more from the hard usage they experienced for professing their religion, there seems to have been an increasing restlessness among the catholics about 1562, which was met with new rigor by the parliament of that year.

§ 4. The act entitled, "for the assurance of the queen's royal power over all estates and subjects within her dominions," enacts, with an iniquitous and sanguinary retrospect, that all persons, who had ever taken holy orders or any degree in the universities, or had been admitted to the practice of the laws, or held any office in their execution, should be bound to take the oath of supremacy, when tendered to them by a bishop, or by commissioners appointed under the great seal. The penalty for the first refusal of this oath was that of a præmunire; but any person who, after the space of three months from the first tender, should again refuse it

when in like manner tendered, incurred the pains of high treason. The oath of supremacy was imposed by the statute on every member of the house of commons, but could not be tendered to a peer; the queen declaring her full confidence in those hereditary councilors. Several peers of great weight and dignity were still catholics.[3]

This harsh statute did not pass without opposition. Two speeches against it have been preserved; one by lord Montagu in the house of lords, the other by Mr. Atkinson in the commons, breathing such generous abhorrence of persecution as some erroneously imagine to have been unknown to that age, because we rarely meet with it in theological writings.

I am never very willing to admit as an apology for unjust or cruel enactments, that they are not designed to be generally executed; a pretext often insidious, always insecure, and tending to mask the approaches of arbitrary government. But it is certain that Elizabeth did not wish this act to be enforced in its full severity. And archbishop Parker, by far the most prudent churchman of the time, judging some of the bishops too little moderate in their dealings with the papists, warned them privately to use great caution in tendering the oath of supremacy according to the act, and never to do so the second time, on which the penalty of treason might attach, without his previous approbation. The temper of some of his colleagues was more narrow and vindictive. Several of the deprived prelates had been detained in a sort of honorable custody in the palaces of their successors. Bonner, the most justly obnoxious of them all, was confined in the Marshalsea. Upon the occasion of this new statute, Horn, bishop of Winchester, indignant at the impunity of such a man, proceeded to tender him the oath of supremacy with an evident intention of driving him to high treason. Bonner, however, instead of evading this attack, intrepidly denied the other to be a lawful bishop; and, strange as it may seem, not only escaped all further molestation, but had the pleasure of seeing his adversaries reduced to pass an act of parliament declaring the present bishops to have been legally consecrated.

§ 5. It was not long after the act imposing such heavy penalties on catholic priests for refusing the oath of supremacy, that the emperor Ferdinand addressed two letters to Elizabeth, interceding for the adherents to that religion, both with respect to those new severities to which they might become liable by conscientiously declining that oath,

[3] 5 Eliz., c. 1.

and to the prohibition of the free exercise of their rites. He suggested that it might be reasonable to allow them the use of one church in every city. And he concluded with an expression, which might possibly be designed to intimate that his own conduct toward the protestants in his dominions would be influenced by her concurrence in his request. Such considerations were not without great importance. The protestant religion was gaining ground in Austria, where a large proportion of the nobility as well as citizens had for some years earnestly claimed its public toleration. Ferdinand, prudent and averse from bigoted counsels, and for every reason solicitous to heal the wounds which religious differences had made in the empire, while he was endeavoring, not absolutely without hope of success, to obtain some concessions from the pope, had shown a disposition to grant further indulgences to his protestant subjects. His son Maximilian, not only through his moderate temper, but some real inclination toward the new doctrine, bade fair to carry much farther the liberal policy of the reigning emperor. It was consulting very little the general interests of protestantism, to disgust persons so capable and so well disposed to befriend it. But our queen, although free from the fanatical spirit of persecution which actuated part of her subjects, was too deeply imbued with arbitrary principles to endure any public deviation from the mode of worship she should prescribe. In her answer to Ferdinand, the queen declares that she can not grant churches to those who disagree from her religion, being against the laws of her parliament, and highly dangerous to the state of her kingdom; as it would sow various opinions in the nation to distract the minds of honest men, and would cherish parties and factions that might disturb the present tranquillity of the commonwealth.

§ 6. Camden and many others have asserted that by systematic connivance the Roman Catholics enjoyed a pretty free use of their religion for the first fourteen years of Elizabeth's reign. But this is not reconcilable to many passages in Strype's collections. We find abundance of persons harassed for recusancy, that is, for not attending the protestant church, and driven to insincere promises of conformity. Others were dragged before ecclesiastical commissioners for harboring priests, or for sending money to those who had fled beyond sea. Students of the inns of court, where popery had a strong hold at this time, were examined in the star-chamber as to their religion, and on not giving satisfactory answers were committed to the Fleet. The catholic party

were not always scrupulous about the usual artifices of an oppressed people, meeting force by fraud, and concealing their heart-felt wishes under the mask of ready submission, or even of zealous attachment. A great majority both of clergy and laity yielded to the times; and of these temporizing conformists it can not be doubted that many lost by degrees all thought of returning to their ancient fold. But others, while they complied with exterior ceremonies, retained in their private devotions their accustomed mode of worship. It is an admitted fact, that the catholics generally attended the church, till it came to be reckoned a distinctive sign of their having renounced their own religion. They persuaded themselves (and the English priests, uninstructed and accustomed to a temporizing conduct, did not discourage the notion) that the private observance of their own rites would excuse a formal obedience to the civil power. The Romish scheme of worship, though it attaches more importance to ceremonial rites, has one remarkable difference from the protestant, that it is far less social; and consequently the prevention of its open exercise has far less tendency to weaken men's religious associations, so long as their individual intercourse with a priest, its essential requisite, can be preserved. Priests therefore traveled the country in various disguises, to keep alive a flame which the practice of outward conformity was calculated to extinguish. There was not a county throughout England, says a catholic historian, where several of Mary's clergy did not reside, commonly called the old priests. They served as chaplains in private families. By stealth, at the dead of night, in private chambers, in the secret lurking-places of an ill-peopled country, with all the mystery that subdues the imagination, with all the mutual trust that invigorates constancy, these proscribed ecclesiastics celebrated their solemn rites, more impressive in such concealment than if surrounded by all their former splendor. The strong predilection indeed of mankind for mystery, which has probably led many to tamper in political conspiracies without much further motive, will suffice to preserve secret associations, even where their purposes are far less interesting than those of religion. Many of these itinerant priests assumed the character of protestant preachers; and it has been said, with some truth, though not probably without exaggeration, that, under the directions of their crafty court, they fomented the division then springing up, and mingled with the anabaptists and other sectaries, in the hope both of exciting dislike to the establishment, and of in-

stilling their own tenets, slightly disguised, into the minds of unwary enthusiasts.

§ 7. It is my thorough conviction that the persecution, for it can obtain no better name, carried on against the English catholics, however it might serve to delude the government by producing an apparent conformity, could not but excite a spirit of disloyalty in many adherents of that faith. Nor would it be safe to assert that a more conciliating policy would have altogether disarmed their hostility, much less laid at rest those busy hopes of the future, which the peculiar circumstances of Elizabeth's reign had a tendency to produce. This remarkable posture of affairs affected all her civil, and still more her ecclesiastical policy. Her own title to the crown depended absolutely on a parliamentary recognition. The act of 35 H. 8, c. 1, had settled the crown upon her, and thus far restrained the previous statute, 28 H. 8, c. 7, which had empowered her father to regulate the succession at his pleasure. Besides this legislative authority, his testament had bequeathed the kingdom to Elizabeth after her sister Mary; and the common consent of the nation had ratified her possession. But the queen of Scots, niece of Henry by Margaret, his eldest sister, had a prior right to the throne during Elizabeth's life, in the eyes of such catholics as preferred an hereditary to a parliamentary title, and was reckoned by the far greater part of the nation its presumptive heir after her decease. There could indeed be no question of this, had the succession been left to its natural course. But Henry had exercised the power with which his parliament, in too servile a spirit, yet in the plenitude of its sovereign authority, had invested him, by settling the succession in remainder upon the house of Suffolk, descendants of his second sister Mary, to whom he postponed the elder line of Scotland. Mary left two daughters, Frances and Eleanor. The former became wife of Grey, marquis of Dorset, created duke of Suffolk by Edward; and had three daughters—Jane, whose fate is well known, Catherine and Mary. Eleanor Brandon, by her union with the earl of Cumberland, had a daughter, who married the earl of Derby. At the beginning of Elizabeth's reign, or rather after the death of the duchess of Suffolk, lady Catherine Grey was by statute law the presumptive heiress of the crown; but according to the rules of hereditary descent, which the bulk of mankind do not readily permit an arbitrary and capricious enactment to disturb, Mary queen of Scots, granddaughter of Margaret, was the indisputable representative of her royal progenitors, and the next in succession to Elizabeth.

§ 8. This reversion, indeed, after a youthful princess, might well appear rather an improbable contingency. It was to be expected that a fertile marriage would defeat all speculations about her inheritance; nor had Elizabeth been many weeks on the throne, before this began to occupy her subjects' minds. Among several who were named, two very soon became the prominent candidates for her favor, the archduke Charles, son of the emperor Ferdinand, and lord Robert Dudley, some time after created earl of Leicester; one recommended by his dignity and alliances, the other by her own evident partiality. She gave at the outset so little encouragement to the former proposal, that Leicester's ambition did not appear extravagant. But her ablest councilors, who knew his vices, and her greatest peers, who thought his nobility recent and ill acquired, deprecated so unworthy a connection. Few will pretend to explore the labyrinths of Elizabeth's heart; yet we may almost conclude that her passion for this favorite kept up a struggle against her wisdom for the first seven or eight years of her reign. Meantime she still continued unmarried; and those expressions she had so early used, of her resolution to live and die a virgin, began to appear less like coy affectation than at first. Never had a sovereign's marriage been more desirable for a kingdom. Cecil, aware how important it was that the queen should marry, but dreading her union with Leicester, contrived, about the end of 1564, to renew the treaty with the archduke Charles. During this negotiation, which lasted from two to three years, she showed not a little of that evasive and dissembling coquetry which was to be more fully displayed on subsequent occasions. Leicester deemed himself so much interested as to quarrel with those who manifested any zeal for the Austrian marriage; but his mistress gradually overcame her misplaced inclinations; and from the time when that connection was broken off, his prospects of becoming her husband seem rapidly to have vanished away. The pretext made for relinquishing this treaty with the archduke was Elizabeth's constant refusal to tolerate the exercise of his religion; a difficulty which, whether real or ostensible, recurred in all her subsequent negotiations of a similar nature.

In every parliament of Elizabeth the house of commons was zealously attached to the protestant interest. This, as well as an apprehension of disturbance from a contested succession, led to those importunate solicitations that she would choose a husband, which she so artfully evaded. Though

the queen's marriage were the primary object of these addresses, as the most probable means of securing an undisputed heir to the crown, yet she might have satisfied the parliament in some degree by limiting the succession to one certain line. But it seems doubtful whether this would have answered the proposed end. If she had taken a firm resolution against matrimony, it might be less dangerous to leave the course of events to regulate her inheritance. Though all parties seem to have conspired in pressing her to some decisive settlement on this subject, it would not have been easy to content the two factions, who looked for a successor to very different quarters. It is evident that any confirmation of the Suffolk title would have been regarded by the queen of Scots and her numerous partisans as a flagrant injustice, to which they would not submit but by compulsion; and on the other hand, by re-establishing the hereditary line, Elizabeth would have lost her check on one whom she had reason to consider as a rival and competitor, and whose influence was already alarmingly extensive among her subjects.

§ 9. She had, however, in one of the first years of her reign, without any better motive than her own jealous and malignant humor, taken a step not only harsh and arbitrary, but very little consonant to policy, which had almost put it out of her power to defeat the queen of Scots' succession. Lady Catherine Grey, who has been already mentioned as next in remainder of the house of Suffolk, proved with child by a private marriage, as they both alleged, with the earl of Hertford. The queen, always envious of the happiness of lovers, and jealous of all who could entertain any hopes of the succession, threw them both into the Tower. By connivance of their keepers, the lady bore a second child during this imprisonment. Upon this, Elizabeth caused an inquiry to be instituted before a commission of privy councilors and civilians; wherein, the parties being unable to adduce proof of their marriage, archbishop Parker pronounced that their cohabitation was illegal, and that they should be censured for fornication. He was to be pitied if the law obliged him to utter so harsh a sentence, or to be blamed if it did not. Even had the marriage never been solemnized, it was impossible to doubt the existence of a contract, which both were still desirous to perform. But there is reason to believe that there had been an actual marriage, though so hasty and clandestine that they had not taken precautions to secure evidence of it. The injured lady

sank under this hardship and indignity; but the legitimacy of her children was acknowledged by general consent, and, in a distant age, by a legislative declaration. These proceedings excited much dissatisfaction; generous minds revolted from their severity, and many lamented to see the reformed branch of the royal stock thus bruised by the queen's unkind and impolitic jealousy. Hales, clerk of the hanaper, a zealous protestant, having written in favor of lady Catherine's marriage, and of her title to the succession, was sent to the Tower. The lord keeper, Bacon himself, a known friend to the house of Suffolk, being suspected of having prompted Hales to write this treatise, lost much of his mistress's favor. Even Cecil, though he had taken a share in prosecuting lady Catherine, perhaps in some degree from an apprehension that the queen might remember he had once joined in proclaiming her sister Jane, did not always escape the same suspicion; and it is probable that he felt the imprudence of entirely discountenancing a party from which the queen and religion had nothing to dread. There is reason to believe that the house of Suffolk was favored in parliament; the address of the commons in 1563, imploring the queen to settle the succession, contains several indications of a spirit unfriendly to the Scottish line; and a speech is extant, said to have been made as late as 1571, expressly vindicating the rival pretension. If indeed we consider with attention the statute of 13 Eliz., c. 1, which renders it treasonable to deny that the sovereigns of this kingdom, with consent of parliament, might alter the line of succession, it will appear little short of a confirmation of that title which the descendants of Mary Brandon derived from a parliamentary settlement. But the doubtful birth of lord Beauchamp and his brother, as well as an ignoble marriage, which Frances, the younger sister of lady Catherine Grey, had thought it prudent to contract, deprived this party of all political consequence much sooner, as I conceive, than the wisest of Elizabeth's advisers could have desired; and gave rise to various other pretensions, which failed not to occupy speculative or intriguing tempers throughout this reign.

§ 10. We may well avoid the tedious and intricate paths of Scottish history, where each fact must be sustained by a controversial discussion. Every one will recollect that Mary Stuart's retention of the arms and style of England gave the first, and, as it proved, inexpiable provocation to Elizabeth. The English queen took revenge by intriguing

with all the malcontents of Scotland. But while she was endeavoring to render Mary's throne uncomfortable and insecure, she did not employ that influence against her in England, which lay more fairly in her power. She certainly was not unfavorable to the queen of Scots' succession, however she might decline compliance with importunate and injudicious solicitations to declare it. She threw both Hales and one Thornton into prison for writing against that title.

The circumstances wherein Mary found herself placed on her arrival in Scotland were sufficiently embarrassing to divert her attention from any regular scheme against Elizabeth, though she may sometimes have indulged visionary hopes; nor is it probable that, with the most circumspect management, she could so far have mitigated the rancor of some, or checked the ambition of others, as to find leisure for hostile intrigues. But her imprudent marriage with Darnley, and the far greater errors of her subsequent behavior, by lowering both her resources and reputation as far as possible, seemed to be pledges of perfect security from that quarter. Yet it was precisely when Mary was become most feeble and helpless that Elizabeth's apprehensions grew most serious and well-founded.

At the time when Mary, escaped from captivity, threw herself on the protection of a related, though rival queen, three courses lay open to Elizabeth, and were discussed in her councils. To restore her by force of arms, or rather, by a mediation which would certainly have been effectual, to the throne which she had compulsorily abdicated, was the most generous, and would perhaps have turned out the most judicious, proceeding. Reigning thus with tarnished honor and diminished power, she must have continually depended on the support of England, and become little better than a vassal of its sovereign. Still it might be objected by many, that the queen's honor was concerned not to maintain too decidedly the cause of one accused by common fame, and even by evidence that had already been made public, of adultery and the assassination of her husband. To have permitted her retreat into France would have shown an impartial neutrality; and probably that court was too much occupied at home to have afforded her any material assistance. Yet this appeared rather dangerous; and policy was supposed, as frequently happens, to indicate a measure absolutely repugnant to justice, that of detaining her in perpetual custody. Whether this policy had no other fault than its want of justice may reasonably be called in question.

§ 11. The queen's determination neither to marry nor limit the succession had inevitably turned every one's thoughts toward the contingency of her death. She was young indeed; but had been dangerously ill, once in 1562, and again in 1568. Of all possible competitors for the throne, Mary was incomparably the most powerful, both among the nobility and the people. Besides the undivided attachment of all who retained any longings for the ancient religion, and many such were to be found at Elizabeth's court and chapel, she had the stronghold of hereditary right, and the general sentiment that revolts from acknowledging the omnipotency of a servile parliament. Cecil, whom no one could suspect of partiality toward her, admits, in a remarkable minute on the state of the kingdom in 1569, that "the queen of Scots' strength standeth by the universal opinion of the world for the justice of her title, as coming of the ancient line." This was no doubt in some degree counteracted by a sense of the danger which her accession would occasion to the protestant church, and which, far more than its parliamentary title, kept up a sort of party for the house of Suffolk. The crimes imputed to her did not immediately gain credit among the people; and some of higher rank were too experienced politicians to turn aside for such considerations. She had always preserved her connections among the English nobility, of whom many were catholics, and others adverse to Cecil, by whose counsels the queen had been principally directed in all her conduct with regard to Scotland and its sovereign. After the unfinished process of inquiry to which Mary submitted at York and Hampton Court, when the charge of participation in Darnley's murder had been substantiated by evidence at least that she did not disprove, and the whole course of which proceedings created a very unfavorable impression both in England and on the Continent, no time was to be lost by those who considered her as the object of their dearest hopes. She was in the kingdom; she might, by a bold rescue, be placed at their head; every hour's delay increased the danger of her being delivered up to the rebel Scots; and doubtless some eager protestants had already begun to demand her exclusion by an absolute decision of the legislature.

Elizabeth must have laid her account, if not with the disaffection of the catholic party, yet at least with their attachment to the queen of Scots. But the extensive combination that appeared, in 1569, to bring about by force the duke of Norfolk's marriage with that princess, might well startle her

cabinet. In this combination Westmoreland and Northumberland, avowed catholics, Pembroke and Arundel, suspected ones, were mingled with Sussex and even Leicester, unquestioned protestants. The duke of Norfolk himself, greater and richer than any English subject, had gone such lengths in this conspiracy, that his life became the just forfeit of his guilt and folly. It is almost impossible to pity this unhappy man, who, lured by the most criminal ambition, after proclaiming the queen of Scots a notorious adulteress and murderer, would have compassed a union with her at the hazard of his sovereign's crown, of the tranquillity and even independence of his country, and of the reformed religion. There is abundant proof of his intrigues with the duke of Alva, who had engaged to invade the kingdom. His trial was not indeed conducted in a manner that we can approve (such was the nature of state proceedings in that age); nor can it, I think, be denied that it formed a precedent of constructive treason not easily reconcilable with the statute; but much evidence is extant that his prosecutors did not adduce, and no one fell by a sentence more amply merited, or the execution of which was more indispensable.

Norfolk was the dupe throughout all this intrigue of more artful men; first of Murray and Lethington, who had filled his mind with ambitious hopes, and afterward of Italian agents employed by Pius V. to procure a combination of the catholic party. Collateral to Norfolk's conspiracy, but doubtless connected with it, was that of the northern earls of Northumberland and Westmoreland, long prepared, and perfectly foreseen by the government, of which the ostensible and manifest aim was the re-establishment of popery. Pius V., who took a far more active part than his predecessor in English affairs, and had secretly instigated this insurrection, now published his celebrated bull, excommunicating and deposing Elizabeth, in order to second the efforts of her rebellious subjects. This is, perhaps, with the exception of that issued by Sixtus V. against Henry IV. of France, the latest blast of that trumpet which had thrilled the hearts of monarchs. Yet there was nothing in the sound that bespoke declining vigor; even the illegitimacy of Elizabeth's birth is scarcely alluded to; and the pope seems to have chosen rather to tread the path of his predecessors, and absolve her subjects from their allegiance, as the just and necessary punishment of her heresy.

§ 12. The bull of Pius V., far more injurious in its consequences to those it was designed to serve than to Elizabeth,

forms a leading epoch in the history of our English catholics. It rested upon a principle never universally acknowledged, and regarded with much jealousy by temporal governments, yet maintained in all countries by many whose zeal and ability rendered them formidable—the right vested in the supreme pontiff to depose kings for heinous crimes against the church. One Felton affixed this bull to the gates of the bishop of London's palace, and suffered death for the offense. So audacious a manifestation of disloyalty was imputed with little justice to the catholics at large, but might more reasonably lie at the door of those active instruments of Rome, the English refugee priests and jesuits dispersed over Flanders, and lately established at Douay, who were continually passing into the kingdom, not only to keep alive the precarious faith of the laity, but, as was generally surmised, to excite them against their sovereign. This produced the act of 13 Eliz., c. 2; which, after reciting these mischiefs, enacts that all persons publishing any bull from Rome, or absolving and reconciling any one to the Romish church, or being so reconciled, should incur the penalties of high treason; and such as brought into the realm any crosses, pictures, or superstitious things consecrated by the pope or under his authority, should be liable to a præmunire. Those who should conceal or connive at the offenders were to be held guilty of misprision of treason. This statute exposed the catholic priesthood, and in great measure the laity, to the continual risk of martyrdom; for so many had fallen away from their faith through a pliant spirit of conformity with the times, that the regular discipline would exact their absolution and reconciliation before they could be reinstated in the church's communion. Another act of the same session, manifestly leveled against the partisans of Mary, and even against herself, makes it high treason to affirm that the queen ought not to enjoy the crown, but some other person; or to publish that she is a heretic, schismatic, tyrant, infidel, or usurper of the crown; or to claim right to the crown, or to usurp the same during the queen's life; or to affirm that the laws and statutes do not bind the right of the crown, and the descent, limitation, inheritance, or governance thereof. And whosoever should, during the queen's life, by any book or work written or printed, expressly affirm, before the same had been established by parliament, that any one particular person was or ought to be heir and successor to the queen, except the same be the natural issue of her body, or should print or utter any such book or writing, was for the first offense to be

imprisoned a year, and to forfeit half his goods; and for the second, to incur the penalties of a præmunire.

It is impossible to misunderstand the chief aim of this statute. But the house of commons, in which the zealous protestants, or, as they were now rather denominated, puritans, had a predominant influence, were not content with these demonstrations against the unfortunate captive. Fear, as often happens, excited a sanguinary spirit among them; they addressed the queen upon what they called the great cause, that is, the business of the queen of Scots, presenting by their committee reasons gathered out of the civil law to prove that "it standeth not only with justice, but also with the queen's majesty's honor and safety, to proceed criminally against the pretended Scottish queen." Elizabeth, who could not really dislike these symptoms of hatred toward her rival, took the opportunity of simulating more humanity than the commons; and when they sent a bill to the upper house attainting Mary of treason, checked its course by proroguing the parliament. I do not think it admits of much question that, at this juncture, the civil and religious institutions of England would have been rendered more secure by Mary's exclusion from the throne, which indeed, after all that had occurred, she could not be endured to fill without national dishonor. But the violent measures suggested against her life were hardly, under all the circumstances of her case, to be reconciled with justice; even admitting her privity to the northern rebellion and to the projected invasion by the duke of Alva.

§ 13. We can not wonder to read that these new statutes increased the dissatisfaction of the Roman catholics, who perceived a systematic determination to extirpate their religion. Many retired to foreign countries, and, receiving for their maintenance pensions from the court of Spain, became unhappy instruments of its ambitious enterprises. Those who remained at home could hardly think their oppression much mitigated by the precarious indulgences which Elizabeth's caprice, or rather the fluctuation of different parties in her councils, sometimes extended to them. The queen indeed, so far as we can penetrate her dissimulation, seems to have been really averse to extreme rigor against her catholic subjects; and her greatest minister, as we shall more fully see afterward, was at this time in the same sentiments. But such of her advisers as leaned toward the puritan faction, and too many of the Anglican clergy, whether puritan or not, thought no measure of charity or compassion should be

extended to them. With the divines they were idolaters; with the council they were a dangerous and disaffected party; with the judges they were refractory transgressors of statutes; on every side they were obnoxious and oppressed.

This indulgence, however, shown by Elizabeth, the topic of reproach in those times, and sometimes of boast in our own, never extended to any positive toleration, nor even to any general connivance at the Roman worship in its most private exercise. She published a declaration in 1570, that she did not intend to sift men's consciences, provided they observed her laws by coming to church; which, as she well knew, the strict catholics deemed inconsistent with their integrity. Nor did the government always abstain from an inquisition into men's private thoughts. The inns of court were more than once purified of popery by examining their members on articles of faith. Gentlemen of good families in the country were harassed in the same manner. It is worthy to be repeatedly inculcated on the reader, since so false a color has been often employed to disguise the ecclesiastical tyranny of this reign, that the most clandestine exercise of the Romish worship was severely punished. Thus we read in the life of Whitgift, that, on information given that some ladies and others heard mass in the house of one Edwards by night, in the county of Denbigh, he, being then bishop of Worcester and vice-president of Wales, was directed to make inquiry into the facts; and finally was instructed to commit Edwards to close prison; and as for another person implicated, named Morice, "if he remained obstinate he might cause some kind of torture to be used upon him; and the like order they prayed him to use with the others." But this is one of many instances, the events of every day, forgotten on the morrow, and of which no general historian takes account. Nothing but the minute and patient diligence of such a compiler as Strype, who thinks no fact below his regard, could have preserved this from oblivion.

§ 14. It will not surprise those who have observed the effect of all persecution for matters of opinion upon the human mind, that during this period the Romish party continued such in numbers and in zeal as to give the most lively alarm to Elizabeth's administration. One cause of this was beyond doubt the connivance of justices of the peace, a great many of whom were secretly attached to the same interest, though it was not easy to exclude them from the commission, on account of their wealth and respectability.

The facility with which catholic rites can be performed in secret, was a still more important circumstance. Nor did the voluntary exiles established in Flanders remit their diligence in filling the kingdom with emissaries. The object of many at least among them, it can not for a moment be doubted, from the era of the bull of Pius V., if not earlier, was nothing less than to subvert the queen's throne. They were closely united with the court of Spain, which had passed from the character of an ally and pretended friend to that of a cold and jealous neighbor, and at length of an implacable adversary. Though no war had been declared between Elizabeth and Philip, neither party had scrupled to enter into leagues with the disaffected subjects of the other. Such sworn vassals of Rome and Spain as an Allen or a Persons were just objects of the English government's distrust; it is the extension of that jealousy to the peaceful and loyal which we stigmatize as oppressive, and even as impolitic.

§ 15. In concert with the directing powers of the Vatican and Escurial, the refugees redoubled their exertions about the year 1580. Mary was now wearing out her years in hopeless captivity; her son, though they did not lose hope of him, had received a strictly protestant education; while a new generation had grown up in England, rather inclined to diverge more widely from the ancient religion than to suffer its restoration. Such were they who formed the house of commons that met in 1581, discontented with the severities used against the puritans, but ready to go beyond any measures that the court might propose to subdue and extirpate popery. Here an act was passed which, after repeating the former provisions that had made it high treason to reconcile any of her majesty's subjects, or to be reconciled, to the church of Rome, imposes a penalty of £20 a month on all persons absenting themselves from church, unless they shall hear the English service at home: such as could not pay the same within three months after judgment were to be imprisoned until they should conform. The queen, by a subsequent act, had the power of seizing two-thirds of the party's land, and all his goods, for default of payment.[4] These grievous penalties on recusancy, as the willful absence of catholics from church came now to be denominated, were doubtless founded on the extreme difficulty of proving an actual celebration of their own rites. But they established a persecution which fell not at all short in principle of that for which the inquisition had become so odious. Nor were

[4] 23 Eliz., c. 1, and 29 Eliz., c. 6.

the statutes merely designed for terror's sake, to keep a check over the disaffected, as some would pretend. They were executed in the most sweeping and indiscriminating manner, unless, perhaps, a few families of high rank might enjoy a connivance.

It had certainly been the desire of Elizabeth to abstain from capital punishments on the score of religion. The first instance of a priest suffering death by her statutes was in 1577, when one Mayne was hanged at Launceston, without any charge against him except his religion; and a gentleman who had harbored him was sentenced to imprisonment for life. In 1581, several seminary priests from Flanders having been arrested, whose projects were supposed (perhaps not wholly without foundation) to be very inconsistent with their allegiance, it was unhappily deemed necessary to hold out some more conspicuous examples of rigor. Of those brought to trial, the most eminent was Campian, formerly a protestant, but long known as the boast of Douay for his learning and virtues. This man, so justly respected, was put to the rack, and revealed through torture the names of some catholic gentlemen with whom he had conversed. He appears to have been indicted along with several other priests, not on the recent statutes, but on that of 25 Edw. III., for compassing and imagining the queen's death. Nothing that I have read affords the slightest proof of Campian's concern in treasonable practices, though his connections, and profession as a jesuit, render it by no means unlikely. If we may confide in the published trial, the prosecution was as unfairly conducted, and supported by as slender evidence, as any perhaps which can be found in our books. But as this account, wherein Campian's language is full of a dignified eloquence, rather seems to have been compiled by a partial hand, its faithfulness may not be above suspicion. For the same reason I hesitate to admit his alleged declarations at the place of execution, where, as well as at his trial, he is represented to have expressly acknowledged Elizabeth, and to have prayed for her as his queen *de facto* and *de jure*. For this was one of the questions propounded to him before his trial, which he refused to answer, in such a manner as betrayed his way of thinking. Most of those interrogated at the same time, on being pressed whether the queen was their lawful sovereign, whom they were bound to obey, notwithstanding any sentence of deprivation that the pope might pronounce, endeavored, like Campian, to evade the snare. A few, who unequivocally disclaimed the deposing power of the Roman

see, were pardoned. It is more honorable to Campian's memory that we should reject these pretended declarations than imagine him to have made them at the expense of his consistency and integrity. For the pope's right to deprive kings of their crowns was in that age the common creed of the jesuits, to whose order Campian belonged; and the Continent was full of writings published by the English exiles—by Sanders, Bristow, Persons, and Allen—against Elizabeth's unlawful usurpation of the throne. But many availed themselves of what was called an explanation of the bull of Pius V., given by his successor Gregory XIII., namely, that the bull should be considered as always in force against Elizabeth and the heretics, but should only be binding on catholics when due execution of it could be had. This was designed to satisfy the consciences of some papists in submitting to her government, and taking the oath of allegiance. But in thus granting a permission to dissemble, in hope of better opportunity for revolt, this interpretation was not likely to tranquilize her council, or conciliate them toward the Romish party. The distinction, however, between a king by possession and one by right was neither heard for the first nor for the last time in the reign of Elizabeth. It is the lot of every government that is not founded on the popular opinion of legitimacy to receive only a precarious allegiance. Subject to this reservation, which was pretty generally known, it does not appear that the priests or other Roman catholics, examined at various times during this reign, are more chargeable with insincerity or dissimulation than accused persons generally are.

The public executions, numerous as they were, scarcely form the most odious part of this persecution. The common law of England has always abhorred the accursed mysteries of a prison-house, and neither admits of torture to extort confession, nor of any penal infliction not warranted by a judicial sentence. But this law, though still sacred in the courts of justice, was set aside by the privy council under the Tudor line. The rack seldom stood idle in the Tower for all the latter part of Elizabeth's reign.

§ 16. Such excessive severities under the pretext of treason, but sustained by very little evidence of any other offense than the exercise of the catholic ministry, excited indignation throughout a great part of Europe. The queen was held forth in pamphlets, dispersed everywhere from Rome and Douay, not only as a usurper and heretic, but a tyrant more ferocious than any heathen persecutor, for inadequate

parallels to whom they ransacked all former history. These exaggerations, coming from the very precincts of the Inquisition, required the unblushing forehead of bigotry; but the charge of cruelty stood on too many facts to be passed over, and it was thought expedient to repel it by two remarkable pamphlets, both ascribed to the pen of Lord Burleigh. One of these, entitled "The Execution of Justice in England for Maintenance of Public and Private Peace," appears to have been published in 1583. It contains an elaborate justification of the late prosecutions for treason, as no way connected with religious tenets, but grounded on the ancient laws for protection of the queen's person and government from conspiracy. It is alleged that a vast number of catholics, whether of the laity or priesthood, among whom the deprived bishops are particularly enumerated, had lived unmolested on the score of their faith, because they paid due temporal allegiance to their sovereign. Nor were any indicted for treason but such as obstinately maintained the pope's bull depriving the queen of her crown. And even of these offenders, as many as after condemnation would renounce their traitorous principles had been permitted to live; such was her majesty's unwillingness, it is asserted, to have any blood spilled without this just and urgent cause proceeding from themselves. But that any matter of opinion not proved to have ripened into an overt act, and extorted only, or rather conjectured, through a compulsive inquiry, could sustain in law or justice a conviction for high treason, is what the author of this pamphlet has not rendered manifest.

A second and much shorter paper bears for title, "A Declaration of the favorable Dealing of her Majesty's Commissioners appointed for the Examination of certain Traitors, and of Tortures unjustly reported to be done upon them for Matter of Religion." Its scope was to palliate the imputation of excessive cruelty with which Europe was then resounding. Those who revere the memory of lord Burleigh must blush for this pitiful apology.

"It is affirmed for truth," he says, "that the forms of torture in their severity or rigor of execution have not been such and in such manner performed as the slanderers and seditious libelers have published. And that even the principal offender, Campian himself, who was sent and came from Rome, and continued here in sundry corners of the realm, having secretly wandered in the greater part of the shires of England in a disguised suit, to the intent to make special preparation of treasons, was never so racked but that he was perfectly able to walk and to write, and did presently write and subscribe all his confessions. The queen's servants, the warders, whose office and act it is to handle the rack, were ever by those that attended the exami-

nations specially charged to use it in so charitable a manner as such a thing might be. None of those who were at any time put to the rack," he proceeds to assert, "were asked, during their torture, any question as to points of doctrine, but merely concerning their plots and conspiracies, and the persons with whom they had had dealings, and what was their own opinion as to the pope's right to deprive the queen of her crown. Nor was any one so racked until it was rendered evidently probable, by former detections or confessions, that he was guilty; nor was the torture ever employed to wring out confessions at random, nor unless the party had first refused to declare the truth at the queen's commandment."

Such miserable excuses serve only to mingle contempt with our detestation. But it is due to Elizabeth to observe that she ordered the torture to be disused; and upon a subsequent occasion, the quartering of some concerned in Babington's conspiracy having been executed with unusual cruelty, gave directions that the rest should not be taken down from the gallows until they were dead.

§ 17. The strictness used with recusants, which much increased from 1579 or 1580, had the usual consequence of persecution — that of multiplying hypocrites. For, in fact, if men will once bring themselves to comply, to take all oaths, to practice all conformity, to oppose simulation and dissimulation to arbitrary inquiries, it is hardly possible that any government should not be baffled. Fraud becomes an overmatch for power. The real danger meanwhile, the internal disaffection, remains as before, or is aggravated. The laws enacted against popery were precisely calculated to produce this result. The oath of supremacy was not refused, the worship of the church was frequented by multitudes who secretly repined for a change; and the council, whose fear of open enmity had prompted their first severities, were led on, by the fear of dissembled resentment, to devise yet further measures of the same kind. Hence, in 1584, a law was enacted enjoining all jesuits, seminary priests, and other priests, whether ordained within or without the kingdom, to depart from it within forty days, on pain of being adjudged traitors. The penalty of fine and imprisonment at the queen's pleasure was inflicted on such as, knowing any priest to be within the realm, should not discover it to a magistrate. This seemed to fill up the measure of persecution, and to render the longer preservation of this obnoxious religion absolutely impracticable. A general inquisition seems to have been made about this time; but whether it was founded on sufficient grounds of previous suspicion we can not absolutely determine. The earl of Northumberland, brother of him who had been executed for the rebellion of 1570, and the

earl of Arundel, son of the unfortunate duke of Norfolk, were committed to the Tower, where the former put an end to his own life (for we can not charge the government with an unproved murder); and the second, after being condemned for a traitorous correspondence with the queen's enemies, died in that custody. But whether or no some conspiracies (I mean more active than usual, for there was one perpetual conspiracy of Rome and Spain during most of the queen's reign) had preceded these severe and unfair methods by which her ministry counteracted them, it was not long before schemes more formidable than ever were put in action against her life. As the whole body of catholics was irritated and alarmed by the laws of proscription against their clergy, and by the heavy penalties on recusancy, which, as they alleged, showed a manifest purpose to reduce them to poverty; so some desperate men saw no surer means to rescue their cause than the queen's assassination. One Somerville, half a lunatic, and Parry, a man who, long employed as a spy upon the papists, had learned to serve with sincerity those he was sent to betray, were the first who suffered death for unconnected plots against Elizabeth's life. More deep-laid machinations were carried on by several catholic laymen at home and abroad, among whom a brother of lord Paget was the most prominent. These had in view two objects, the deliverance of Mary and the death of her enemy. Some perhaps who were engaged in the former project did not give countenance to the latter. But few, if any, ministers have been better served by their spies than Cecil and Walsingham. It is surprising to see how every letter seems to have been intercepted, every thread of these conspiracies unraveled, every secret revealed to these wise councilors of the queen. They saw that, while one lived whom so many deemed the presumptive heir, and from whose succession they anticipated, at least in possibility, an entire reversal of all that had been wrought for thirty years, the queen was as a mark for the pistol or dagger of every zealot. And fortunate, no question, they thought it, that the detection of Babington's conspiracy enabled them with truth, or a semblance of truth, to impute a participation in that crime to the most dangerous enemy whom, for their mistress, their religion, or themselves, they had to apprehend.

§ 18. Mary had now consumed the best years of her life in custody, and, though still the perpetual object of the queen's vigilance, had perhaps gradually become somewhat less formidable to the protestant interest. Whether she would

have ascended the throne if Elizabeth had died during the latter years of her imprisonment must appear very doubtful when we consider the increasing strength of the puritans, the antipathy of the nation to Spain, the prevailing opinion of her consent to Darnley's murder, and the obvious expedient of treating her son, now advancing to manhood, as the representative of her claim. The new projects imputed to her friends, even against the queen's life, exasperated the hatred of the protestants against Mary. An association was formed in 1584, the members of which bound themselves by oath,

"To withstand and pursue, as well by force of arms as by all other means of revenge, all manner of persons, of whatsoever state they shall be, and their abettors, that shall attempt any act, or counsel or consent to any thing, that shall tend to the harm of her majesty's royal person; and never to desist from all manner of forcible pursuit against such persons, to the utter extermination of them, their counselors, aiders, and abettors. And if any such wicked attempt against her most royal person shall be taken in hand or procured, whereby any that have, may, or shall pretend title to come to this crown by the untimely death of her majesty so wickedly procured (which God of his mercy forbid!), that the same may be avenged, we do not only bind ourselves both jointly and severally never to allow, accept, or favor, any such pretended successsor, by whom or for whom any such detestable act shall be attempted or committed, as unworthy of all government in any Christian realm or civil state, but do also further vow and promise, as we are most bound, and that in the presence of the eternal and everlasting God, *to prosecute such person or persons to death* with our joint and particular forces, and to act the utmost revenge upon them that by any means we or any of us can devise and do, or cause to be devised and done, for their utter overthrow and extirpation."

The pledge given by this voluntary association received the sanction of parliament in an act "for the security of the queen's person and continuance of the realm in peace." This statute enacts, that if any invasion or rebellion should be made by or for any person pretending title to the crown after her majesty's decease, or if any thing be confessed or imagined tending to the hurt of her person, with the privity of any such person, a number of peers, privy councilors, and judges, to be commissioned by the queen, should examine and give judgment on such offenses, and all circumstances relating thereto; after which judgment all persons against whom it should be published should be disabled forever to make any such claim.[5] I omit some further provisions to the same effect for the sake of brevity. But we may remark that this statute differs from the associators' engagement in omitting the outrageous threat of pursuing to death any person, whether privy or not to the design, on whose behalf an

[5] 27 Eliz., c. 1.

attempt against the queen's life should be made. The main intention of the statute was to procure, in the event of any rebellious movements, what the queen's councilors had long ardently desired to obtain from her, an absolute exclusion of Mary from the succession. But if the scheme of assassination devised by some of her desperate partisans had taken effect, however questionable might be her concern in it, I have little doubt that the rage of the nation would, with or without some process of law, have instantly avenged it in her blood. This was, in the language of parliament, their great cause; an expression which, though it may have an ultimate reference to the general interest of religion, is never applied, so far as I remember, but to the punishment of Mary, which they had demanded in 1572, and now clamored for in 1586. The addresses of both houses to the queen to carry the sentence passed by the commissioners into effect, her evasive answers and feigned reluctance, as well as the strange scenes of hypocrisy which she acted afterward, are well-known matters of history upon which it is unnecessary to dwell. No one will be found to excuse the hollow affectation of Elizabeth; but the famous sentence that brought Mary to the scaffold, though it has certainly left in popular opinion a darker stain on the queen's memory than any other transaction of her life, if not capable of complete vindication, has at least encountered a disproportioned censure.

It is of course essential to any kind of apology for Elizabeth in this matter that Mary should have been assenting to a conspiracy against her life; for it could be no real crime to endeavor at her own deliverance; nor, under the circumstances of so long and so unjust a detention, would even a conspiracy against the aggressor's power afford a moral justification for her death. But though the proceedings against her are by no means exempt from the shameful breach of legal rules almost universal in trials for high treason during that reign (the witnesses not having been examined in open court), yet the depositions of her two secretaries, joined to the confessions of Babington and other conspirators, form a body of evidence, not indeed irresistibly convincing, but far stronger than we find in many instances where condemnation has ensued. And Hume has alleged sufficient reasons for believing its truth, derived from the great probability of her concurring in any scheme against her oppressor, from the certainty of her long correspondence with the conspirators (who, I may add, had not made any difficulty of hinting to her their designs against the queen's

life), and from the deep guilt that the falsehood of the charge must inevitably attach to Sir Francis Walsingham. Those at least who can not acquit the queen of Scots of her husband's murder, will hardly imagine that she would scruple to concur in a crime so much more capable of extenuation, and so much more essential to her interests. But as the proofs are not perhaps complete, we must hypothetically assume her guilt, in order to set this famous problem in the casuistry of public law upon its proper footing.

It has been said so often that few perhaps wait to reflect whether it has been said with reason that Mary, as an independent sovereign, was not amenable to any English jurisdiction. This, however, does not appear unquestionable. By one of those principles of law which may be called natural, as forming the basis of a just and rational jurisprudence, every independent government is supreme within its own territory. Strangers, voluntarily resident within a state, owe a temporary allegiance to its sovereign, and are amenable to the jurisdiction of its tribunals; and this principle, which is perfectly conformable to natural law, has been extended by positive usage even to those who are detained in it by force. It is certainly true that an exception to this rule, incorporated with the positive law of nations, and established, no doubt, before the age of Elizabeth, has rendered the ambassadors of sovereign princes exempt, in all ordinary cases at least, from criminal process. Whether, however, an ambassador may not be brought to punishment for such a flagrant abuse of the confidence which is implied by receiving him, as a conspiracy against the life itself of the prince at whose court he resides, has been doubted by those writers who are most inclined to respect the privileges with which courtesy and convenience have invested him. A sovereign, during a temporary residence in the territories of another, must of course possess as extensive an immunity as his representative; but that he might, in such circumstances, frame plots for the prince's assassination with impunity, seems to take for granted some principle that I do not understand.

But whatever be the privilege of inviolability attached to sovereigns, it must, on every rational ground, be confined to those who enjoy and exercise dominion in some independent territory. An abdicated or dethroned monarch may preserve his title by the courtesy of other states, but can not rank with sovereigns in the tribunals where public law is administered. I should be rather surprised to hear any one

assert that the parliament of Paris was incompetent to try Christina for the murder of Monaldeschi. And, though we must admit that Mary's resignation of her crown was compulsory, and retracted on the first occasion; yet, after a twenty-years' loss of possession, when not one of her former subjects avowed allegiance to her, when the king of Scotland had been so long acknowledged by England and by all Europe, is it possible to consider her as more than a titular queen divested of every substantial right to which a sovereign tribunal could have regard? She was styled accordingly, in the indictment, "Mary, daughter and heir of James the Fifth, late king of Scots, otherwise called Mary queen of Scots, dowager of France." We read even that some lawyers would have had her tried by a jury of the county of Stafford, rather than by the special commission; which Elizabeth noticed as a strange indignity. The commission, however, was perfectly legal under the recent statute.

But while we can hardly pronounce Mary's execution to have been so wholly iniquitous and unwarrantable as it has been represented, it may be admitted that a more generous nature than that of Elizabeth would not have exacted the law's full penalty. The queen of Scots' detention in England was in violation of all natural, public, and municipal law; and if reasons of state policy, or precedents from the custom of princes, are allowed to extenuate this injustice, it is to be asked whether such reasons and such precedents might not palliate the crime of assassination imputed to her. Some might perhaps allege, as was so frequently urged at the time, that, if her life could be taken with justice, it could not be spared in prudence; and that Elizabeth's higher duty to preserve her people from the risks of civil commotion must silence every feeling that could plead for mercy. Of this necessity different judgments may perhaps be formed. It is evident that Mary's death extinguished the best hope of popery in England: but the relative force of the two religions was greatly changed since Norfolk's conspiracy; and it appears to me that an act of parliament explicitly cutting her off from the crown, and at the same time entailing it on her son, would have afforded a very reasonable prospect of securing the succession against all serious disturbance. But this neither suited the inclination of Elizabeth nor of some among those who surrounded her.

§ 19. As the catholics endured without any open murmuring the execution of her on whom their fond hopes had so long rested, so for the remainder of the queen's reign they

by no means appear, when considered as a body, to have furnished any specious pretexts for severity. In that memorable year when the dark cloud gathered around our coasts, when Europe stood by in fearful suspense to behold what should be the result of that great cast in the game of human politics, what the craft of Rome, the power of Philip, the genius of Farnese, could achieve against the island-queen with her Drakes and Cecils—in that agony of the protestant faith and English name, they stood the trial of their spirit without swerving from their allegiance. It was then that the catholics in every county repaired to the standard of the lord-lieutenant, imploring that they might not be suspected of bartering the national independence for their religion itself. It was then that the venerable lord Montague brought a troop of horse to the queen at Tilbury, commanded by himself, his son, and grandson. It would have been a sign of gratitude if the laws depriving them of the free exercise of their religion had been, if not repealed, yet suffered to sleep, after these proofs of loyalty. But the execution of priests and of other catholics became, on the contrary, more frequent, and the fines for recusancy were exacted as rigorously as before. A statute was enacted restraining popish recusants, a distinctive name now first imposed by law, to particular places of residence, and subjecting them to other vexatious provisions. All persons were forbidden by proclamation to harbor any of whose conformity they were not assured. Some indulgence was doubtless shown during all Elizabeth's reign to particular persons, and it was not unusual to release priests from confinement; but such precarious and irregular connivance gave more scandal to the puritans than comfort to the opposite party.

§ 20. The catholic martyrs under Elizabeth amount to no inconsiderable number. Dodd reckons them at 191; Milner has raised the list to 204. Fifteen of these, according to him, suffered for denying the queen's supremacy, 126 for exercising their ministry, and the rest for being reconciled to the Romish church. Many others died of hardships in prison, and many were deprived of their property. There seems nevertheless to be good reason for doubting whether any one who was executed might not have saved his life by explicitly denying the pope's power to depose the queen. It was constantly maintained by her ministers that no one had been executed for his religion. This would be an odious and hypocritical subterfuge if it rested on the letter of these statutes, which adjudge the mere manifestation of a

belief in the Roman catholic religion, under certain circumstances, to be an act of treason. But both lord Burleigh, in his "Execution of Justice," and Walsingham, in a letter published by Burnet, positively assert the contrary; and I am not aware that their assertion has been disproved. This certainly furnishes a distinction between the persecution under Elizabeth (which, unjust as it was in its operation, yet, as far as it extended to capital inflictions, had in view the security of the government) and that which the protestants had sustained in her sister's reign, springing from mere bigotry and vindictive rancor, and not even shielding itself at the time with those shallow pretexts of policy which it has of late been attempted to set up in its extenuation. But that which renders these condemnations of popish priests so iniquitous is, that the belief in, or rather the refusal to disclaim, a speculative tenet, dangerous indeed, and incompatible with loyalty, but not coupled with any overt act, was construed into treason; nor can any one affect to justify these sentences who is not prepared to maintain that a refusal of the oath of abjuration, while the pretensions of the house of Stuart subsisted, might lawfully or justly have incurred the same penalty.

An apology was always deduced for these measures, whether of restriction or punishment, adopted against all adherents to the Roman church, from the restless activity of that new militia which the Holy See had lately organized. The mendicant orders established in the thirteenth century had lent former popes a powerful aid toward subjecting both the laity and the secular priesthood, by their superior learning and ability, their emulous zeal, their systematic concert, their implicit obedience. But in all these requisites for good and faithful janizaries of the church, they were far excelled by the new order of Ignatius Loyola. Rome, I believe, found in their services what has stayed her fall. They contributed in a very material degree to check the tide of the Reformation. Subtile alike and intrepid, pliant in their direction, unshaken in their aim, the sworn, implacable, unscrupulous enemies of protestant governments, the jesuits were a legitimate object of jealousy and restraint. As every member of that society enters into an engagement of absolute, unhesitating obedience to its superior, no one could justly complain that he was presumed capable at least of committing any crimes that the policy of his monarch might enjoin. But if the jesuits by their abilities and busy spirit of intrigue promoted the interests of Rome, they raised up ene-

mies by the same means to themselves within the bosom of the church, and became little less obnoxious to the secular clergy, and to a great proportion of the laity, than to the protestants whom they were commissioned to oppose. Their intermeddling character was shown in the very prisons occupied by catholic recusants, where a schism broke out between the two parties, and the secular priests loudly complained of their usurping associates. This was manifestly connected with the great problem of allegiance to the queen, which the one side being always ready to pay, did not relish the sharp usage it endured on account of the other's disaffection. The council indeed gave some signs of attending to this distinction, by a proclamation issued in 1602, ordering all priests to depart from the kingdom, unless they should come in and acknowledge their allegiance, with whom the queen would take further order. Thirteen priests came forward on this, with a declaration of allegiance as full as could be devised. Some of the more violent papists blamed them for this; and the Louvain divines concurred in the censure. There were now two parties among the English catholics; and those who, goaded by the sense of long persecution, and inflamed by obstinate bigotry, regarded every heretical government as unlawful or unworthy of obedience, used every machination to deter the rest from giving any test of their loyalty. These were the more busy, but by much the less numerous class; and their influence was mainly derived from the laws of severity, which they had braved or endured with fortitude. It is equally candid and reasonable to believe that, if a fair and legal toleration, or even a general connivance at the exercise of their worship, had been conceded in the first part of Elizabeth's reign, she would have spared herself those perpetual terrors of rebellion which occupied all her later years. Rome would not, indeed, have been appeased, and some desperate fanatic might have sought her life; but the English catholics collectively would have repaid her protection by an attachment which even her rigor seems not wholly to have prevented.

It is not to be imagined that an entire unanimity prevailed in the councils of this reign as to the best mode of dealing with the adherents of Rome. Those temporary connivances or remissions of punishment which, though to our present view they hardly lighten the shadows of this persecution, excited loud complaints from bigoted men, were owing to the queen's personal humor, or the influence of some advisers more liberal than the rest. Elizabeth herself seems always

to have inclined rather to indulgence than extreme severity. Sir Christopher Hatton, for some years her chief favorite, incurred odium for his lenity toward papists, and was, in their own opinion, secretly inclined to them. Whitgift found enough to do with an opposite party. And that too noble and high-minded spirit, so ill fitted for a servile and dissembling court, the earl of Essex, was the consistent friend of religious liberty, whether the catholic or the puritan were to enjoy it. But those councilors, on the other hand, who favored the more precise reformers, and looked coldly on the established church, never failed to demonstrate their protestantism by excessive harshness toward the old religion's adherents. That bold bad man, whose favor is the great reproach of Elizabeth's reign, the earl of Leicester, and the sagacious, disinterested, inexorable Walsingham, were deemed the chief advisers of sanguinary punishments. But, after their deaths, the catholics were mortified to discover that lord Burleigh, from whom they had hoped for more moderation, persisted in the same severities.

NOTE TO CHAPTER III.

THE OATH OF SUPREMACY (p. 71).

THE oath of supremacy was expressed as follows: "I, A. B., do utterly testify and declare, that the queen's highness is the only supreme governor of this realm, and all other her highness's dominions and countries, as well in all spiritual and ecclesiastical things or causes as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, preeminence, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm."

A remarkable passage in the injunctions to the ecclesiastical visitors of 1559, which may be reckoned in the nature of a contemporaneous exposition of the law, restrains the royal supremacy established by this act, and asserted in the above oath, in the following words: "Her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labor to notify to her loving subjects how by words of the said oath it may be collected that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church; wherein her said subjects be much abused by such evil disposed persons. For certainly her majesty neither doth, nor ever will, challenge any other authority than that was challenged and lately used by the said noble kings of famous memory, king Henry VIII. and king Edward VI., which is, and was of ancient time, due to the imperial crown of this realm; that is, under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person that

hath conceived any other sense of the form of the said oath shall accept the same with this interpretation, sense, or meaning, her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act, against such as shall peremptorily or obstinately refuse to take the same oath." 1 Somers Tracts, edit. Scott, 73.

This interpretation was afterward given in one of the thirty-nine articles, which having been confirmed by parliament, it is undoubtedly to be reckoned the true sense of the oath. Mr. Butler, in his Memoirs of English Catholics, vol. i., p. 157, enters into a discussion of the question, whether Roman Catholics might conscientiously take the oath of supremacy in this sense. It appears that in the seventeenth century some contended for the affirmative; and this seems to explain the fact that several persons of that persuasion, besides peers, from whom the oath was not exacted, did actually hold offices under the Stuarts, and even enter into parliament, and that the test act and declaration against transubstantiation were thus rendered necessary to make their exclusion certain.

As to the exposition before given of the oath of supremacy, I conceive that it was intended not only to relieve the scruples of catholics, but of those who had imbibed from the school of Calvin an apprehension of what is sometimes, though rather improperly, called Erastianism—the merging of all spiritual powers, even those of ordination and of preaching, in the paramount authority of the state toward which the despotism of Henry, and obsequiousness of Cranmer, had seemed to bring the church of England.

CHAPTER IV.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING PROTESTANT NON-CONFORMISTS.

§ 1. Origin of the Differences among the English Protestants. § 2. Religious Inclinations of the Queen. § 3. Unwillingness of many to comply with the established Ceremonies. § 4. Conformity enforced by the Archbishop. § 5. Separate conventicles. § 6. A more determined Opposition, about 1570, led by Cartwright. Dangerous Nature of his Tenets. § 7. Puritans supported in the Commons. § 8. And in some measure by the council. § 9. Prophesyings. § 10. Archbishops Grindal and Whitgift. Conduct of the latter in enforcing Conformity. § 11. High Commission Court. Lord Burleigh averse to Severity. § 12. Puritan Libels. § 13. Attempt to set up Presbyterian System. § 14. House of Commons averse to Episcopal Authority. § 15. Independents liable to severe Laws. § 16. Hooker's Ecclesiastical Polity. § 17. Spoliation of Church Revenues.

§ 1. The two statutes enacted in the first year of Elizabeth, commonly called the acts of supremacy and uniformity, are the main links of the Anglican church with the temporal constitution, and establish the subordination and dependency of the former; the first abrogating all jurisdiction and legislative power of ecclesiastical rulers, except under the authority of the crown; and the second prohibiting all changes of rites and discipline without the approbation of parliament. It was the constant policy of this queen to maintain her ecclesiastical prerogative and the laws she had enacted. But in following up this principle she found herself involved in many troubles, and had to contend with a religious party quite opposite to the Romish, less dangerous indeed, and inimical to her government, but full as vexatious and determined.

I have in another place slightly mentioned the differences that began to spring up under Edward VI. between the moderate reformers who established the new Anglican church, and those who accused them of proceeding with too much forbearance in casting off superstitions and abuses.[1] These diversities of opinion were not without some relation to those which distinguished the two great families of protestantism in Europe. Luther, intent on his own system of dogmatic theology, had shown much indifference about retrenching exterior ceremonies, and had even favored, especially in the first years of his preaching, that specious worship which some ardent reformers were eager to reduce to simplicity. Cruci-

[1] See p. 66.

fixes and images, tapers and priestly vestments, even for a time the elevation of the host and the Latin mass-book, continued in the Lutheran churches; while the disciples of Zwingle and Calvin were carefully eradicating them as popish idolatry and superstition. Cranmer and Ridley, the founders of the English Reformation, justly deeming themselves independent of any foreign master, adopted a middle course between the Lutheran and Calvinistic ritual. The general tendency however of protestants, even in the reign of Edward VI., was toward the simpler forms; whether through the influence of those foreign divines who co-operated in our Reformation, or because it was natural in the heat of religious animosity to recede as far as possible, especially in such exterior distinctions, from the opposite denomination. The death of Edward seems to have prevented a further approach to the scheme of Geneva in our ceremonies, and perhaps in our church government. During the persecution of Mary's reign the most eminent protestant clergymen took refuge in various cities of Germany and Switzerland. They were received by the Calvinists with hospitality and fraternal kindness; while the Lutheran divines, a narrow-minded, intolerant faction, both neglected and insulted them.[2] Divisions soon arose among themselves about the use of the English service, in which a pretty considerable party was disposed to make alterations. The chief scene of these disturbances was Frankfort, where Knox, the famous reformer of Scotland, headed the innovators; while Cox, an eminent divine, much concerned in the establishment of Edward VI., and afterward bishop of Ely, stood up for the original liturgy. Cox succeeded (not quite fairly, if we may rely on the only narrative we possess) in driving his opponents from the city; but these disagreements were by no means healed when the accession of Elizabeth recalled both parties to their own country, neither of them very likely to display more mutual charity in their prosperous hour than they had been able to exercise in a common persecution.

§ 2. The first mortification these exiles endured on their return was to find a more dilatory advance toward public reformation of religion, and more of what they deemed lukewarmness, than their sanguine zeal had anticipated. Most part of this delay was owing to the greater prudence of the queen's councilors, who felt the pulse of the nation before they ventured on such essential changes. But there was yet another obstacle on which the reformers had not reckoned.

[2] Strype's Cranmer, 354.

Elizabeth, though resolute against submitting to the papal supremacy, was not so averse to all the tenets abjured by protestants, and loved also a more splendid worship than had prevailed in her brother's reign; while many of those returned from the Continent were intent on copying a still simpler model. She reproved a divine who preached against the real presence, and is even said to have used prayers to the Virgin. But her great struggle with the reformers was about images, and particularly the crucifix, which she retained, with lighted tapers before it, in her chapel; though in the injunctions to the ecclesiastical visitors of 1559 they are directed to have them taken away from churches. This concession she must have made very reluctantly, for we find proofs the next year of her inclination to restore them; and the question of their lawfulness was debated, as Jewell writes word to Peter Martyr, by himself and Grindal on one side, against Parker and Cox, who had been persuaded to argue in their favor. But the strenuous opposition of men so distinguished as Jewell, Sandys, and Grindal, of whom the first declared his intention of resigning his bishopric in case this return toward superstition should be made, compelled Elizabeth to relinquish her project. The crucifix was even for a time removed from her own chapel, but replaced about 1570.

There was, however, one other subject of dispute between the old and new religions upon which her majesty could not be brought to adopt the protestant side of the question. This was the marriage of the clergy, to which she expressed so great an aversion, that she would never consent to repeal the statute of her sister's reign against it. Accordingly the bishops and clergy, though they married by connivance, or rather by an ungracious permission, saw with very just dissatisfaction their children treated by the law as the offspring of concubinage. This continued, in legal strictness, till the first year of James, when the statute of Mary was explicitly repealed; though I can not help suspecting that clerical marriages had been tacitly recognized, even in courts of justice, long before that time. Yet it appears less probable to derive Elizabeth's prejudice in this respect from any deference to the Roman discipline, than from that strange dislike to the most lawful union between the sexes which formed one of the singularities of her character.

Such a reluctance as the queen displayed to return in every point even to the system established under Edward was no slight disappointment to those who thought that too little had been effected by it. They had beheld at Zurich and

Geneva the simplest and, as they conceived, the purest form of worship. They were persuaded that the vestments still worn by the clergy, as in the days of popery, though in themselves indifferent, led to erroneous notions among the people, and kept alive a recollection of former superstitions, which would render their return to them more easy in the event of another political revolution. They disliked some other ceremonies for the same reason. These objections were by no means confined, as is perpetually insinuated, to a few discontented persons. Except archbishop Parker, who had remained in England during the late reign, and Cox, bishop of Ely, who had taken a strong part at Frankfort against innovation, all the most eminent churchmen, such as Jewell, Grindal, Sandys, Nowell, were in favor of leaving off the surplice and what were called the popish ceremonies. Whether their objections are to be deemed narrow and frivolous or otherwise, it is inconsistent with veracity to dissemble that the queen alone was the cause of retaining those observances to which the great separation from the Anglican establishment is ascribed. Had her influence been withdrawn, surplices and square caps would have lost their steadiest friend; and several other little accommodations to the prevalent dispositions of protestants would have taken place. Of this it seems impossible to doubt, when we read the proceedings of the convocation in 1562, when a proposition to abolish most of the usages deemed objectionable was lost only by a vote, the numbers being 59 to 58.

§ 3. The repugnance felt by a large part of the protestant clergy to the ceremonies with which Elizabeth would not consent to dispense, showed itself in irregular transgressions of the uniformity prescribed by statute. Some continued to wear the habits, others laid them aside; the communicants received the sacrament sitting, or standing, or kneeling, according to the minister's taste; some baptized in the font, others in a basin; some with the sign of the cross, others without it. The people in London and other towns, siding chiefly with the malcontents, insulted such of the clergy as observed the prescribed order. Many of the bishops readily connived at deviations from ceremonies which they disapproved. Some, who felt little objection to their use, were against imposing them as necessary. And this opinion, which led to very momentous inferences, began so much to prevail, that we soon find the objections to conformity more grounded on the unlawfulness of compulsory regulations in the church prescribed by the civil power, than on any special

impropriety in the usages themselves. But this principle, which perhaps the scrupulous party did not yet very fully avow, was altogether incompatible with the supremacy vested in the queen, of which fairest flower of her prerogative she was abundantly tenacious. One thing was evident, that the puritan malcontents were growing every day more numerous, more determined, and more likely to win over the generality of those who sincerely favored the protestant cause. There were but two lines to be taken; either to relax and modify the regulations which gave offense, or to enforce a more punctual observation of them. It seems to me far more probable that the former course would have prevented a great deal of that mischief which the second manifestly aggravated. For in this early stage the advocates of a simpler ritual had by no means assumed the shape of an embodied faction, which concessions, it must be owned, are not apt to satisfy, but numbered the most learned and distinguished portion of the hierarchy. Parker stood nearly alone on the other side, but alone more than an equipoise in the balance, through his high station, his judgment in matters of policy, and his knowledge of the queen's disposition. He had possibly reason to apprehend that Elizabeth, irritated by the prevalent humor for alteration, might burst entirely away from the protestant side, or stretch her supremacy to reduce the church into a slavish subjection to her caprice.

§ 4. The unsettled state of exterior religion which has been mentioned lasted till 1565. In the beginning of that year a determination was taken by the queen, or rather, perhaps, the archbishop, to put a stop to all irregularities in the public service. He set forth a book called "Advertisements," containing orders and regulations for the discipline of the clergy. This modest title was taken in consequence of the queen's withholding her sanction of its appearance, through Leicester's influence. The primate's next step was to summon before the ecclesiastical commission Sampson, dean of Christ church, and Humphrey, president of Magdalen college, Oxford, men of signal non-conformity, but at the same time of such eminent reputation that, when the law took its course against them, no other offender could hope for indulgence. On refusing to wear the customary habits, Sampson was deprived of his deanery; but the other seems to have been tolerated. This instance of severity, as commonly happens, rather irritated than intimidated the puritan clergy, aware of their numbers, their popularity, and their powerful friends, but above all sustained by their own sin-

cerity and earnestness. Parker had taken his resolution to proceed in the vigorous course he had begun. He obtained from the queen a proclamation, peremptorily requiring a conformity in the use of the clerical vestments and other matters of discipline. The London ministers, summoned before himself and their bishop, Grindal, who did not very willingly co-operate with his metropolitan, were called upon for a promise to comply with the legal ceremonies, which thirty-seven out of ninety-eight refused to make. They were in consequence suspended from their ministry, and their livings put in sequestration. But these unfortunately, as was the case in all this reign, were the most conspicuous both for their general character and for their talent in preaching.[3]

§ 5. Whatever deviations from uniformity existed within the pale of the Anglican church, no attempt had hitherto been made to form separate assemblies; nor could it be deemed necessary while so much indulgence had been conceded to the scrupulous clergy. But they were now reduced to determine whether the imposition of those rites they disliked would justify, or render necessary, an abandonment of their ministry. Several of the most respectable opponents of the ceremonies were adverse to any open schism. But the animosities springing from heated zeal, and the smart of what seemed oppression, would not suffer the English puritans generally to acquiesce in such temperate counsels. They began to form separate conventicles in London, not ostentatiously indeed, but of course without the possibility of eluding notice. It was doubtless worthy of much consideration whether an established church government could wink at the systematic disregard of its discipline by those who were subject to its jurisdiction and partook of its revenues. But there are few, I trust, who can hesitate to admit that the puritan clergy, after being excluded from their benefices, might still claim from a just government a peaceful toleration of their particular worship. This it was vain to expect from the queen's arbitrary spirit, the imperious humor of Parker, and that total disregard of the rights of conscience which was common to all parties in the sixteenth century. The first instance of actual punishment inflicted on protestant dissenters was in June, 1567, when a company of more than one hundred were seized during their religious exercises at Plummer's Hall, which they had hired on pretense of a wedding, and fourteen or fifteen of them were sent to pris-

[3] Life of Parker, 214. Strype says, p. 223, that the suspended ministers preached again after a little time by connivance.

on. They behaved on their examination with a rudeness, as well as self-sufficiency, that had already begun to characterize the puritan faction. But this can not excuse the fatal error of molesting men for the exercise of their own religion.

These coercive proceedings of the archbishop were feebly seconded, or directly thwarted, by most leading men both in church and state. Grindal and Sandys, successively bishops of London and archbishops of York, were naturally reckoned at this time somewhat favorable to the non-conforming ministers, whose scruples they had partaken. Parkhurst and Pilkington, bishops of Norwich and Durham, were openly on their side. They had still more effectual support in the queen's council. The earl of Leicester, who possessed more power than any one to sway her wavering and capricious temper, the earls of Bedford, Huntingdon, and Warwick, regarded as the steadiest protestants among the aristocracy, the wise and grave lord-keeper Bacon, the sagacious Walsingham, the experienced Sadler, the zealous Knollys, considered these objects of Parker's severity either as demanding a purer worship than had been established in the church, or at least as worthy by their virtues and services of more indulgent treatment. Cecil himself, though on intimate terms with the archbishop, and concurring generally in his measures, was not far removed from the latter way of thinking, if his natural caution and extreme dread at this juncture of losing the queen's favor had permitted him more unequivocally to express it. Those whose judgment did not incline them toward the puritan notions respected the scruples of men in whom the reformed religion could so implicitly confide. They had regard also to the condition of the church. The far greater part of its benefices were supplied by conformists of very doubtful sincerity, who would resume their mass-books with more alacrity than they had cast them aside. Such a deficiency of protestant clergy had been experienced at the queen's accession, that for several years it was a common practice to appoint laymen, usually mechanics, to read the service in vacant churches. These were not always wholly illiterate; or, if they were, it was no more than might be said of the popish clergy, the vast majority of whom were destitute of all useful knowledge, and could read little Latin. Of the two universities, Oxford had become so strongly attached to the Romish side during the late reign, that, after the desertion or expulsion of the most zealous of that party had almost emptied several colleges, it still for many years abounded with adherents to the old re-

ligion. But at Cambridge, which had been equally popish at the queen's accession, the opposite faction soon acquired the ascendant. The younger students, imbibing ardently the new creed of ecclesiastical liberty, and excited by puritan sermons, began to throw off their surplices, and to commit other breaches of discipline, from which it might be inferred that the generation to come would not be less apt for innovation than the present.

§ 6. The first period in the history of puritanism includes the time from the queen's accession to 1570, during which the retention of superstitious ceremonies in the church had been the sole avowed ground of complaint. But when these obnoxious rites came to be enforced with unsparing rigor, and even those who voluntarily renounced the temporal advantages of the establishment were hunted from their private conventicles, they began to consider the national system of ecclesiastical regimen as itself in fault, and to transfer to the institution of episcopacy that dislike which they felt for some of the prelates. The ostensible founder of this new school (though probably its tenets were by no means new to many of the sect) was Thomas Cartwright, the lady Margaret's professor of divinity at Cambridge. He began about 1570 to inculcate the unlawfulness of any form of church government, except what the apostles had instituted, namely, the presbyterian. A deserved reputation for virtue, learning, and acuteness, an ardent zeal, an inflexible self-confidence, a vigorous, rude, and arrogant style, marked him as the formidable leader of a religious faction. In 1572 he published his celebrated Admonition to the Parliament, calling on that assembly to reform the various abuses subsisting in the church. In this treatise such a hardy spirit of innovation was displayed, and schemes of ecclesiastical policy so novel and extraordinary were developed, that it made a most important epoch in the contest, and rendered its termination far more improbable. The hour for liberal concessions had been suffered to pass away; the archbishop's intolerant temper had taught men to question the authority that oppressed them, till the battle was no longer to be fought for a tippet and a surplice, but for the whole ecclesiastical hierarchy, interwoven as it was with the temporal constitution of England.

It had been the first measure adopted in throwing off the yoke of Rome to invest the sovereign with an absolute control over the Anglican church; so that no part of its coercive discipline could be exercised but by his authority, nor

any laws enacted for its governance without his sanction. This supremacy, indeed, both Henry VIII. and Edward VI. had carried so far, that the bishops were reduced almost to the rank of temporal officers taking out commissions to rule their dioceses during the king's pleasure; and Cranmer had prostrated at the feet of Henry those spiritual functions which have usually been reckoned inherent in the order of clergy. Elizabeth took some pains to soften, and almost explain away, her supremacy, in order to conciliate the catholics; while, by means of the High Commission court, established by statute in the first year of her reign, she was practically asserting it with no little despotism. But the avowed opponents of this prerogative were hitherto chiefly those who looked to Rome for another head of their church. The disciples of Cartwright now learned to claim an ecclesiastical independence, as unconstrained as any that the Romish priesthood in the darkest ages had usurped.

"No civil magistrate in councils or assemblies for church matters," he says in his Admonition, "can either be chief moderator, overruler, judge, or determiner; nor has he such authority as that, without his consent, it should not be lawful for ecclesiastical persons to make any church orders or ceremonies. Church matters ought ordinarily to be handled by church officers. The principal direction of them is by God's ordinance committed to the ministers of the church and to the ecclesiastical governors. As these meddle not with the making civil laws, so the civil magistrate ought not to ordain ceremonies, or determine controversies in the church, as long as they do not intrench upon his temporal authority. 'Tis the prince's province to protect and defend the councils of his clergy, to keep the peace, to see their decrees executed, and to punish the contemners of them; but to exercise no spiritual jurisdiction." "It must be remembered," he says in another place, "that civil magistrates must govern the church according to the rules of God, prescribed in his word; and that, as they are nurses, so they be servants unto the church; and as they rule in the church, so they must remember to submit themselves unto the church, to submit their sceptres, to throw down their crowns before the church, yea, as the prophet speaketh, to lick the dust off the feet of the church."

It is difficult to believe that I am transcribing the words of a protestant writer; so much does this passage call to mind the tones of infatuated arrogance which had been heard from the lips of Gregory VII. and of those who trod in his footsteps.

The strength of the protestant party had been derived, both in Germany and in England, far less from their superiority in argument, however decisive this might be, than from that desire which all classes, and especially the higher, had long experienced to emancipate themselves from the thralldom of ecclesiastical jurisdiction. For it is ever found that

the generality of mankind do not so much as give a hearing to novel systems in religion till they have imbibed, from some cause or other, a secret distaste to that in which they have been educated. It was therefore rather alarming to such as had an acquaintance with ecclesiastical history, and knew the encroachments formerly made by the hierarchy throughout Europe, encroachments perfectly distinguishable from those of the Roman see, to perceive the same pretensions urged, and the same ambition and arrogance at work, which had imposed a yoke on the necks of their fathers. With whatever plausibility it might be maintained that a connection with temporal magistrates could only corrupt the purity and shackle the liberties of a Christian church, this argument was not for them to urge who called on those magistrates to do the church's bidding, to enforce its decrees, to punish its refractory members; and while they disdained to accept the prince's co-operation as their ally, claimed his service as their minister. The protestant dissenters since the revolution, who have almost unanimously, and, I doubt not, sincerely, declared their averseness to any religious establishment, especially as accompanied with coercive power, even in favor of their own sect, are by no means chargeable with these errors of the early puritans. But the scope of Cartwright's declaration was not to obtain a toleration for dissent; not even, by abolishing the whole ecclesiastical polity, to place the different professions of religion on an equal footing; but to substitute his own model of government, the one, exclusive, unappealable standard of obedience, with all the endowments, so far as applicable to its frame, of the present church, and with all the support to its discipline that the civil power could afford.

We are not, however, to conclude that every one, or even the majority, of those who might be counted on the puritan side in Elizabeth's reign, would have subscribed to these extravagant sentences of Cartwright, or desired to take away the legal supremacy of the crown. That party acquired strength by the prevailing hatred and dread of popery, and by the disgust which the bishops had been unfortunate enough to excite. If the language which I have quoted from the puritans breathed a spirit of ecclesiastical usurpation that might one day become dangerous, many were of opinion that a spirit not less mischievous in the present hierarchy, under the mask of the queen's authority, was actually manifesting itself in deeds of oppression. The upper ranks among the laity, setting aside courtiers, and such as took lit-

tle interest in the dispute, were chiefly divided between those attached to the ancient church and those who wished for further alterations in the new. I conceive the church of England party, that is, the party adverse to any species of ecclesiastical change, to have been the least numerous of the three during this reign; still excepting, as I have said, the neutrals, who commonly make a numerical majority, and are counted along with the dominant religion. But by the act of the fifth of Elizabeth, Roman catholics were excluded from the house of commons; or, if some that way affected might occasionally creep into it, yet the terror of penal laws impending over their heads would make them extremely cautious of betraying their sentiments. This contributed, with the prevalent tone of public opinion, to throw such a weight into the puritanical scale in the commons, as it required all the queen's energy to counterbalance.

§ 7. In the parliament that met in April, 1571, a few days only after the commencement of the session, Mr. Strickland, "a grave and ancient man of great zeal," as the reporter styles him, began the attack by a long but apparently temperate speech on the abuses of the church, tending only to the retrenchment of a few superstitions, as they were thought, in the liturgy, and to some reforms in the disposition of benefices. He proceeded to bring in a bill for the reformation of the common prayer, which was read a first time. Abuses in respect to benefices appear to have been a copious theme of scandal. The power of dispensation, which had occasioned so much clamor in former ages, instead of being abolished or even reduced into bounds at the Reformation, had been transferred entire from the pope to the king and archbishop. And, after the council of Trent had effected such considerable reforms in the catholic discipline, it seemed a sort of reproach to the protestant church of England that she retained all the dispensations, the exemptions, the pluralities, which had been deemed the peculiar corruptions of the worst times of popery.

The house of commons gave, in this session, a more forcible proof of its temper in ecclesiastical concerns. The articles of the English church, originally drawn up under Edward VI., after having undergone some alteration, were finally reduced to their present form by the convocation of 1562. But it seems to have been thought necessary that they should have the sanction of parliament, in order to make them binding on the clergy. Of these articles the far greater portion relate to matters of faith, concerning which no

difference of opinion had as yet appeared. Some few, however, declare the lawfulness of the established form of consecrating bishops and priests, the supremacy of the crown, and the power of the church to order rites and ceremonies. These involved the main questions at issue; and the puritan opposition was strong enough to withhold the approbation of the legislature from this part of the national symbol. The act of 13 Eliz., c. 12, accordingly enacts that every priest or minister shall subscribe to all the articles of religion which *only* concern the confession of the true Christian faith, and the doctrine of the sacraments, comprised in a book entitled "Articles whereupon it was agreed," etc. That the word *only* was inserted for the sake of excluding the articles which established church authority and the actual discipline, is evident from a remarkable conversation which Mr. Wentworth, the most distinguished asserter of civil liberty in this reign, relates himself in a subsequent session (that of 1575) to have held on the subject with archbishop Parker. "I was," he says, "among others, the last parliament, sent for unto the archbishop of Canterbury, for the articles of religion that then passed this house. He asked us 'Why we did put out of the book the articles for the homilies, consecration of bishops, and such like?' 'Surely, sir,' said I, 'because we were so occupied in other matters that we had no time to examine them how they agreed with the word of God.' 'What!' said he, 'surely you mistake the matter; you will refer yourselves wholly to us therein!' 'No; by the faith I bear to God,' said I, 'we will pass nothing before we understand what it is; for that were but to make you popes: make you popes who list,' said I, 'for we will make you none.' And sure, Mr. Speaker, the speech seemed to me to be a pope-like speech, and I fear least our bishops do attribute this of the pope's canons unto themselves; Papa non potest errare." The intrepid assertion of the right of private judgment on the one side, and the pretension to something like infallibility on the other, which have been for more than two centuries since so incessantly repeated, are here curiously brought into contrast. As to the reservation itself, obliquely insinuated rather than expressed in this statute, it proved of little practical importance, the bishops having always exacted a subscription to the whole thirty-nine articles.

It was not to be expected that the haughty spirit of Parker, which had refused to spare the honest scruples of Sampson and Coverdale, would abate of its rigor toward the daring paradoxes of Cartwright. His disciples, in truth, from

dissatisfied subjects of the church, were become her downright rebels, with whom it was hardly practicable to make any compromise that would avoid a schism, except by sacrificing the splendor and jurisdiction of an established hierarchy. The archbishop continued, therefore, to harass the puritan ministers, suppressing their books, silencing them in churches, prosecuting them in private meetings. Sandys and Grindal, the moderate reformers of our spiritual aristocracy, not only withdrew their countenance from a party who aimed at improvement by subversion, but fell, according to the unhappy temper of their age, into courses of undue severity. Not merely the preachers, to whom, as regular ministers, the rules of canonical obedience might apply, but plain citizens, for listening to their sermons, were dragged before the high commission, and imprisoned upon any refusal to conform.

§ 8. The puritans meanwhile had not lost all their friends in the council, though it had become more difficult to protect them. One powerful reason undoubtedly operated on Walsingham and other ministers of Elizabeth's court against crushing their party; namely, the precariousness of the queen's life, and the unsettled prospects of succession. They had already seen in the duke of Norfolk's conspiracy that more than half the superior nobility had committed themselves to support the title of the queen of Scots. That title was sacred to all who professed the catholic religion, and respectable to a large proportion of the rest. But deeming, as they did, that queen a convicted adulteress and murderer, the determined enemy of their faith, and conscious that she could never forgive those who had counseled her detention and sought her death, it would have been unworthy of their prudence and magnanimity to have gone as sheep to the slaughter, and risk the destruction of protestantism under a second Mary, if the intrigues of ambitious men, the pusillanimity of the multitude, and the specious pretext of hereditary right, should favor her claims on a demise of the crown. They would have failed perhaps in attempting to resist them; but upon resistance I make no question that they had resolved. In so awful a crisis, to what could they better look than to the stern, intrepid, uncompromising spirit of puritanism; congenial to that of the Scottish reformers, by whose aid the lords of the congregation had overthrown the ancient religion in despite of the regent Mary of Guise? Of conforming churchmen in general they might well be doubtful, after the oscillations of the three preceding reigns; but

every abhorrer of ceremonies, every rejecter of prelatical authority, might be trusted as protestant to the heart's core, whose sword would be as ready as his tongue to withstand idolatry. Nor had the puritans admitted, even in theory, those extravagant notions of passive obedience which the church of England had thought fit to mingle with her homilies. While the victory was yet so uncertain, while contingencies so incalculable might renew the struggle, all politic friends of the Reformation would be anxious not to strengthen the enemy by disunion in their own camp. Thus sir Francis Walsingham, who had been against enforcing the obnoxious habits, used his influence with the scrupulous not to separate from the church on account of them; and again, when the schism had already ensued, thwarted, as far as his credit in the council extended, that harsh intolerance of the bishops which aggravated its mischiefs.

§ 9. A matter very much connected with the present subject will illustrate the different schemes of ecclesiastical policy pursued by the two parties that divided Elizabeth's council. The clergy in several dioceses set up, with encouragement from their superiors, a certain religious exercise, called prophesyings. They met at appointed times to expound and discuss together particular texts of Scripture, under the presidency of a moderator appointed by the bishop, who finished by repeating the substance of their debate, with his own determination upon it. These discussions were in public, and it was contended that this sifting of the grounds of their faith and habitual argumentation would both tend to edify the people, very little acquainted as yet with their religion, and supply in some degree the deficiencies of learning among the pastors themselves. These deficiencies were indeed glaring, and it is not unlikely that the prophesyings might have had a salutary effect if it had been possible to exclude the prevailing spirit of the age. It must, however, be evident to any one who had experience of mankind, that the precise clergy, armed not only with popular topics, but with an intrinsic superiority of learning and ability to support them, would wield these assemblies at their pleasure, whatever might be the regulations devised for their control. The queen entirely disliked them, and directed Parker to put them down. He wrote accordingly to Parkhurst, bishop of Norwich, for that purpose. The bishop was unwilling to comply; and some privy councilors interfered by a letter, enjoining him not to hinder those exercises so long as nothing contrary to the church was taught

therein. This letter was signed by sir Thomas Smith, sir Walter Mildmay, bishop Sandys, and sir Francis Knollys. It was, in effect, to reverse what the archbishop had done. Parker, however, who was not easily daunted, wrote again to Parkhurst, that, understanding he had received instructions in opposition to the queen's orders and his own, he desired to be informed what they were. This seems to have checked the councilors, for we find that the prophesyings were now put down.

§ 10. Though many will be of opinion that Parker took a statesmanlike view of the interests of the church of England in discouraging these exercises, they were generally regarded as so conducive to instruction that he seems to have stood almost alone in his opposition to them. Sandys's name appears to the above-mentioned letter of the council to Parkhurst. Cox, also, was inclined to favor the prophesyings; and Grindal, who in 1575 succeeded Parker in the see of Canterbury, bore the whole brunt of the queen's displeasure rather than obey her commands on this subject. He conceived that, by establishing strict rules with respect to the direction of those assemblies, the abuses, which had already appeared, of disorderly debate and attacks on the discipline of the church, might be got rid of without entirely abolishing the exercise. The queen would hear of no middle course, and insisted both that the prophesyings should be discontinued and that fewer licenses for preaching should be granted. For no parish priest could, without a license, preach any discourse except the regular homilies; and this was one of the points of contention with the puritans.[4] Grindal stead-

[4] In one of the canons enacted by convocation in 1571, and on which rather an undue stress has been laid in late controversies, we find a restraint laid on the teaching of the clergy in their sermons who were enjoined to preach nothing but what was agreeable to scripture, and had been collected out of scripture by the catholic fathers and ancient bishops. Imprimis videbunt concionatores, ne quid unquam doceant pro concione, quod a populo religiosè teneri et credi velint, nisi quod consentaneum sit doctrinæ veteris aut novi testamenti, quodque ex illâ ipsâ doctrinâ Catholici patres et veteris episcopi collegerint. This appears to have been directed, in the first place, against those who made use of scholastic authorities and the doctors of the last four or five ages, to whom the church of Rome was fond of appealing; and, secondly, against those who, with little learning or judgment, set up their own interpretations of scripture. Against both these it seemed wise to guard, by directing preachers to the early fathers, whose authority was at least better than that of Romish schoolmen or modern sciolists. It is to be remembered that the exegetical part of divinity was not in the state in which it is at present. Most of the writers to whom a modern preacher has recourse were unborn. But that the contemporary reformers were not held in low estimation as guides in scriptural interpretation, appears by the injunction given some years afterward that every clergyman should provide himself with a copy of Bullinger's decades. The authority given in the above canon to the fathers was certainly but a presumptive one; and, such as it was, it was given to each individually, not to the whole body, on any notion of what has been called catholic consent: since how was a poor English preacher to ascertain this? The real question

ily refused to comply with this injunction, and was in consequence sequestered from the exercise of his jurisdiction for the space of about five years, till, on his making a kind of submission, the sequestration was taken off not long before his death. The queen, by circular letters to the bishops, commanded them to put an end to the prophesyings, which were never afterward renewed.

Whitgift, bishop of Worcester, a person of a very opposite disposition, was promoted, in 1583, to the primacy on Grindal's decease. He had distinguished himself some years before by an answer to Cartwright's Admonition, written with much ability, but not falling short of the work it undertook to confute in rudeness and asperity. It is seldom good policy to confer such eminent stations in the church on the gladiators of theological controversy, who, from vanity and resentment, as well as the course of their studies, will always be prone to exaggerate the importance of the disputes wherein they have been engaged, and to turn whatever authority the laws or the influence of their place may give them against their adversaries. This was fully illustrated by the conduct of archbishop Whitgift, whose elevation the wisest of Elizabeth's councilors had ample reason to regret. In a few months after his promotion he gave an earnest of the rigor he had determined to adopt by promulgating articles for the observance of discipline. One of these prohibited all preaching, reading, or catechising in private houses, whereto any not of the same family should resort, "seeing the same was never permitted as lawful under any Christian magistrate." But that which excited the loudest complaints was the subscription to three points—the queen's supremacy, the lawfulness of the common prayer and ordination service, and the truth of the whole thirty-nine articles, exacted from every minister of the church. These indeed were so far from novelties that it might seem rather supererogatory to demand them (if in fact the law required subscription to all the articles); yet it is highly probable that many had hitherto eluded the legal subscriptions, and that others had conceived their scruples after having conformed to the prescribed order. The archbishop's peremptory requisition passed, perhaps justly, for an illegal stretch of power. It encountered the resistance of men pertinaciously attached to their own tenets, and ready to suffer the privations of poverty rather

as to the authority of the fathers in our church is not whether they are not copiously quoted, but whether our theologians surrendered their own opinion, or that of their side, in deference to such authority when it made against them.

than yield a simulated obedience. To suffer, however, in silence has at no time been a virtue with our protestant dissenters. The kingdom resounded with the clamor of those who were suspended or deprived of their benefices and of their numerous abettors. They appealed from the archbishop to the privy council. The gentry of Kent and other counties strongly interposed in their behalf. They had powerful friends at court, especially Knollys, who wrote a warm letter to the archbishop. But, secure of the queen's support, who was now chiefly under the influence of sir Christopher Hatton, a decided enemy to the puritans, Whitgift relented not a jot of his resolution, and went far greater lengths than Parker had ever ventured, or perhaps had desired, to proceed.

§ 11. The act of supremacy, while it restored all ecclesiastical jurisdiction to the crown, empowered the queen to execute it by commissioners appointed under the great seal, in such manner and for such time as she should direct, whose power should extend to visit, correct, and amend all heresies, schisms, abuses, and offenses whatever, which fall under the cognizance and are subject to the correction of spiritual authority. Several temporary commissions had sat under this act with continually augmented powers before that appointed in 1583, wherein the jurisdiction of this anomalous court almost reached its zenith. It consisted of forty-four commissioners, twelve of whom were bishops, many more privy-councilors, and the rest either clergymen or civilians. This commission, usually called *The High Commission Court*, after reciting the acts of supremacy, uniformity, and two others, directs them to inquire from time to time, as well by the oaths of twelve good and lawful men as by witnesses, and all other means they can devise, of all offenses, contempts, or misdemeanors done and committed contrary to the tenor of the said several acts and statutes; and also to inquire of all heretical opinions, seditious books, contempts, conspiracies, false rumors or talks, slanderous words and sayings, etc., contrary to the aforesaid laws. Power is given to any three commissioners, of whom one must be a bishop, to punish all persons absent from church, according to the act of uniformity, or to visit and reform heresies and schisms according to law; to deprive all beneficed persons holding any doctrine contrary to the thirty-nine articles; to punish incests, adulteries, and all offenses of the kind; to examine all suspected persons on their oaths, and to punish all who should refuse to appear or to obey their orders by spiritual censure, or by discretionary fine or imprisonment; to alter and amend the statutes

of colleges, cathedrals, schools, and other foundations, and to tender the oath of supremacy according to the act of parliament.

Master of such tremendous machinery, the archbishop proceeded to call into action one of its powers, contained for the first time in the present commission, by tendering what was technically styled the oath ex officio to such of the clergy as were surmised to harbor a spirit of puritanical disaffection. This procedure, which was wholly founded on the canon law, consisted in a series of interrogations, so comprehensive as to embrace the whole scope of clerical uniformity, yet so precise and minute as to leave no room for evasion, to which the suspected party was bound to answer upon oath. So repugnant was this to the rules of our English law and to the principles of natural equity, that no species of ecclesiastical tyranny seems to have excited so much indignation. Lord Burleigh, who, though at first rather friendly to Whitgift, was soon disgusted by his intolerant and arbitrary behavior, wrote in strong terms of remonstrance against these articles of examination, as "so curiously penned, so full of branches and circumstances, as he thought the inquisitors of Spain used not so many questions to comprehend and to trap their preys." The primate replied by alleging reasons in behalf of the mode of examination, but very frivolous, and such as a man determined to persevere in an unwarrantable course of action may commonly find. They had little effect on the calm and sagacious mind of the treasurer, who continued to express his dissatisfaction, both individually and as one of the privy council. But the extensive jurisdiction improvidently granted to the ecclesiastical commissioners, and which the queen was not at all likely to recall, placed Whitgift beyond the control of the temporal administration.

The archbishop, however, did not stand alone in this impracticable endeavor to overcome the stubborn sectaries by dint of hard usage. Several other bishops were engaged in the same uncharitable course, but especially Aylmer of London, who has left a worse name in this respect than any prelate of Elizabeth's reign. The violence of Aylmer's temper was not redeemed by many virtues; it is impossible to exonerate his character from the imputations of covetousness and of plundering the revenues of his see: faults very prevalent among the bishops of that period. The privy council wrote sometimes to expostulate with Aylmer in a tone which could hardly have been employed toward a man in his station who had not forfeited the general esteem. Thus, upon occasion

of one Benison, whom he had imprisoned without cause, we find a letter signed by Burleigh, Leicester, Walsingham, and even Hatton, besides several others, urging the bishop to give the man a sum of money, since he would recover damages at law, which might hurt his lordship's credit. Aylmer, however, who was of a stout disposition, especially when his purse was interested, objected strongly to this suggestion, offering rather to confer on Benison a small living, or to let him take his action at law. The result does not appear, but probably the bishop did not yield.

§ 12. There is no middle course, in dealing with religious sectaries, between the persecution that exterminates and the toleration that satisfies. They were wise in their generation, the Loaisas and Valdes of Spain, who kindled the fires of the inquisition, and quenched the rising spirit of protestantism in the blood of a Seso and a Cazalla. But, sustained by the favoring voice of his associates, and still more by that firm persuasion which bigots never know how to appreciate in their adversaries, a puritan minister set at naught the vexatious and arrogant tribunal before which he was summoned. Exasperated, not overawed, the sectaries threw off what little respect they had hitherto paid to the hierarchy. They had learned, in the earlier controversies of the Reformation, the use, or, more truly, the abuse, of that powerful lever of human bosoms, the press. He who in Saxony had sounded the first trumpet-peal against the battlements of Rome had often turned aside from his graver labors to excite the rude passions of the populace by low ribaldry and exaggerated invective; nor had the English reformers ever scrupled to win proselytes by the same arts. What had been accounted holy zeal in the mitred Bale and martyred Latimer, might plead some apology from example in the aggrieved puritan. Pamphlets, chiefly anonymous, were rapidly circulated throughout the kingdom, inveighing against the prelacy. Of these libels the most famous went under the name of Martin Marprelate, a visored knight of those lists, behind whose shield a host of sturdy puritans were supposed to fight. These were printed at a movable press, shifted to different parts of the country as the pursuit grew hot, and contained little serious argument, but the unwarrantable invectives of angry men, who stuck at no calumny to blacken their enemies.[5] If these insults upon authority are apt sometimes to shock us even now, when long usage has rendered such licentiousness of seditious and profligate libelers almost our daily food,

[5] The first of Martin Mar-prelate's libels were published in 1588.

what must they have seemed in the reign of Elizabeth, when the press had no acknowledged liberty, and while the accustomed tone in addressing those in power was little better than servile adulation?

A law had been enacted some years before, leveled at the books dispersed by the seminary priests, which rendered the publication of seditious libels against the queen's government a capital felony.[6] This act, by one of those strained constructions which the judges were commonly ready to put upon any political crime, was brought to bear on some of these puritanical writings. The authors of Martin Mar-prelate could not be traced with certainty; but strong suspicions having fallen on one Penry, a young Welshman, he was tried some time after for another pamphlet, containing sharp reflections on the queen herself, and received sentence of death, which it was thought proper to carry into execution. Udal, a puritan minister, fell into the grasp of the same statute for an alleged libel on the bishops, which had surely a very indirect reference to the queen's administration. His trial, like most other political trials of the age, disgraces the name of English justice. It consisted mainly in a pitiful attempt by the court to entrap him into a confession that the imputed libel was of his writing, as to which their proof was deficient. Though he avoided the snare, the jury did not fail to obey the directions they received to convict him. So far from being concerned in Martin's writings, Udal professed his disapprobation of them, and his ignorance of the author. This sentence appeared too iniquitous to be executed even in the eyes of Whitgift, who interceded for his life; but he died of the effects of confinement.

§ 13. If the libelous pen of Martin Mar-prelate was a thorn to the rulers of the church, they had still more cause to take alarm at an overt measure of revolution which the discontented party began to effect about the year 1590. They set up, by common agreement, their own platform of government by synods and classes; the former being a sort of general assemblies, the latter held in particular shires or dioceses, agreeably to the presbyterian model established in Scotland. In these meetings debates were had, and determinations usually made, sufficiently unfavorable to the established system. The ministers composing them subscribed to the puritan book of discipline. These associations had been formed in several counties, but chiefly in those of Northampton and Warwick, under the direction of Cartwright, the

[6] 23 Eliz., c. 2.

legislator of their republic, who possessed, by the earl of Leicester's patronage, the mastership of a hospital in the latter town. It would be unjust to censure the archbishop for interfering to protect the discipline of his church against these innovators, had but the means adopted for that purpose been more consonant to equity. Cartwright with several of his sect were summoned before the ecclesiastical commission; where, refusing to inculpate themselves by taking the oath ex officio, they were committed to the fleet. This punishment not satisfying the rigid churchmen, and the authority of the ecclesiastical commission being incompetent to inflict any heavier judgment, it was thought fit the next year to remove the proceedings into the court of star-chamber. The judges, on being consulted, gave it as their opinion that, since far less crimes had been punished by condemnation to the galleys or perpetual banishment, the latter would be fittest for their offense. But several of the council had more tender regards to sincere though intractable men; and in the end they were admitted to bail upon a promise to be quiet, after answering some interrogatories respecting the queen's supremacy and other points, with civility and an evident wish to avoid offense. It may be observed that Cartwright explicitly declared his disapprobation of the libels under the name of Martin Mar-prelate.

It was imputed to the puritan faction with more or less of truth, that, not content with the subversion of episcopacy and of the whole ecclesiastical polity established in the kingdom, they maintained principles that would essentially affect its civil institutions. Their denial, indeed, of the queen's supremacy, carried to such lengths as I have shown above, might justly be considered as a derogation of her temporal sovereignty. Many of them asserted the obligation of the judicial law of Moses, at least in criminal cases; and deduce from this the duty of putting idolaters (that is, papists), adulterers, witches, and demoniacs, sabbath-breakers, and several other classes of offenders, to death. They claimed to their ecclesiastical assemblies the right of determining "all matters wherein breach of charity may be, and all matters of doctrine and manners, so far as appertaineth to conscience." They took away the temporal right of patronage to churches, leaving the choice of ministers to general suffrage. There are even passages in Cartwright's Admonition which intimate that the commonwealth ought to be fashioned after the model of the church. But these it would not be candid to press against the more explicit declarations of all the pu-

ritans in favor of a limited monarchy, though they grounded its legitimacy on the republican principles of popular consent. And with respect to the former opinions, they appear to have been by no means common to the whole puritan body; some of the deprived and imprisoned ministers even acknowledging the queen's supremacy in as full a manner as the law conferred it on her, and as she professed to claim it.

The pretensions advanced by the school of Cartwright did not seem the less dangerous to those who cast their eyes upon what was passing in Scotland, where they received a practical illustration. In that kingdom a form of polity very nearly conforming to the puritanical platform had become established at the reformation in 1560; except that the office of bishop or superintendent still continued, but with no paramount, far less arbitrary dominion, and subject even to the provincial synod, much more to the general assembly of the Scottish church. Even this very limited episcopacy was abolished in 1592. The presbyterian clergy, individually and collectively, displayed the intrepid, haughty, and untractable spirit of the English puritans. Though Elizabeth had from policy abetted the Scottish clergy in their attacks upon the civil administration, this connection itself had probably given her such an insight into their temper as well as their influence that she must have shuddered at the thought of seeing a republican assembly substituted for those faithful satraps her bishops, so ready to do her bidding, and so patient under the hard usage she sometimes bestowed on them.

§ 14. These prelates did not, however, obtain so much support from the house of commons as from their sovereign. In that assembly a determined band of puritans frequently carried the victory against the courtiers. Every session exhibited proofs of their dissatisfaction with the state of the church. The crown's influence would have been too weak without stretches of its prerogative. The commons in 1575 received a message forbidding them to meddle with religious concerns. For five years afterward the queen did not convoke parliament, of which her dislike to their puritanical temper might in all probability be the chief reason. But, when they met again in 1580, the same topic of ecclesiastical grievances, which had by no means abated during the interval, was revived. The commons appointed a committee, formed only of the principal officers of the crown who sat in the house, to confer with some of the bishops, according to the irregular and imperfect course of parliamentary proceedings in that age, "touching the griefs of this house for some

things very requisite to be reformed in the church, as the great number of unlearned and unable ministers, the great abuse of excommunications for every matter of small moment, the commutation of penances, and the great multitude of dispensations and pluralities, and other things very hurtful to the church." The committee reported that they found some of the bishops desirous of a remedy for the abuses they confessed, and of joining in a petition for that purpose to her majesty; which had accordingly been done, and a gracious answer, promising all convenient reformation, but laying the blame of remissness upon some prelates, had been received. This the house took with great thankfulness. It was exactly the course which pleased Elizabeth, who had no regard for her bishops, and a real anxiety that her ecclesiastical as well as temporal government should be well administered, provided her subjects would intrust the sole care of it to herself, or limit their interference to modest petitioning.

A new parliament having been assembled, soon after Whitgift on his elevation to the primacy had begun to enforce a universal conformity, the lower house drew up a petition in sixteen articles, to which they requested the lords' concurrence, complaining of the oath ex officio, the subscription to the three new articles, the abuses of excommunication, licenses for non-residence, and other ecclesiastical grievances. The lords replied coolly that they conceived many of those articles which the commons had proposed to be unnecessary, and that others of them were already provided for; and that the uniformity of the common prayer, the use of which the commons had requested to leave in certain respects to the minister's discretion, had been established by parliament. The two archbishops, Whitgift and Sandys, made a more particular answer to each article of the petition, in the name of their brethren. But, in order to show some willingness toward reformation, they proposed themselves, in convocation, a few regulations for redress of abuses, none of which, however, on this occasion, though they received the royal assent, were submitted to the legislature; the queen in fact maintaining an insuperable jealousy of all intermeddling on the part of parliament with her exclusive supremacy over the church. Excluded by Elizabeth's jealousy from entertaining these religious innovations, which would probably have met with no unfavorable reception from a free parliament, the commons vented their ill-will toward the dominant hierarchy in complaints of ecclesiastical grievances, and measures to redress them; as to which, even with the low notions

of parliamentary right prevailing at court, it was impossible to deny their competence. Several bills were introduced this session of 1584–'5 into the lower house, which, though they had little chance of receiving the queen's assent, manifest the sense of that assembly, and in all likelihood of their constituents. One of these imported that bishops should be sworn in one of the courts of justice to do nothing in their office contrary to the common law. Another went to restrain pluralities, as to which the prelates would very reluctantly admit of any limitation. A bill of the same nature passed the commons in 1589, though not without some opposition. The clergy took so great alarm at this measure that the convocation addressed the queen in vehement language against it; and the archbishop throwing all the weight of his advice and authority into the same scale, the bill expired in the upper house. A similar proposition in the session of 1601 seems to have miscarried in the commons. In the next chapter will be found other instances of the commons' reforming temper in ecclesiastical concerns, and the queen's determined assertion of her supremacy.

The oath ex officio, binding the taker to answer all questions that should be put to him, inasmuch as it contravened the generous maxim of English law, that no one is obliged to criminate himself, provoked very just animadversion. Morice, attorney of the court of wards, not only attacked its legality with arguments of no slight force, but introduced a bill to take it away. This was on the whole well received by the house; and Sir Francis Knollys, the staunch enemy of episcopacy, though in high office, spoke in its favor. But the queen put a stop to the proceeding, and Morice lay some time in prison for his boldness. The civilians, of whom several sat in the lower house, defended a mode of procedure that had been borrowed from their own jurisprudence. This revived the ancient animosity between them and the common lawyers. The latter had always manifested a great jealousy of the spiritual jurisdiction, and had early learned to restrain its exorbitances by writs of prohibition from the temporal courts. Whitgift, as tenacious of power as the most ambitious of his predecessors, murmured like them at this subordination, for such it evidently was, to a lay tribunal. But the judges, who found as much gratification in exerting their power as the bishops, paid little regard to the remonstrances of the latter. We find the law reports of this and the succeeding reign full of cases of prohibitions.

§ 15. Notwithstanding the tendency toward puritanism

which the house of commons generally displayed, the court succeeded in procuring an act which eventually pressed with very great severity upon that class. This passed in 1593, and enacted the penalty of imprisonment against any person above the age of sixteen who should forbear for the space of a month to repair to some church, until he should make such open submission and declaration of conformity as the act appoints. Those who refused to submit to these conditions were to abjure the realm, and if they should return without the queen's license to suffer death as felons.[7] As this, on the one hand, like so many former statutes, helped to crush the unfortunate adherents to the Romish faith, so too did it bear an obvious application to such protestant sectaries as had professedly separated from the Anglican church. But it is here worthy of remark, that the puritan ministers throughout this reign disclaimed the imputation of schism, and acknowledged the lawfulness of continuing in the established church, while they demanded a further reformation of her discipline. The real separatists, who were also a numerous body, were denominated Brownists or Barrowists, from the names of their founders, afterward lost in the more general appellation of Independents. These went far beyond the puritans in their aversion to the legal ministry, and were deemed in consequence still more proper subjects for persecution. Multitudes of them fled to Holland from the rigor of the bishops in enforcing this statute. But two of this persuasion, Barrow and Greenwood, experienced a still severer fate. They were indicted on that perilous law of the 23d of the queen, mentioned in the last chapter, for spreading seditious writings, and executed at Bury. They died, Neal tells us, with such expressions of piety and loyalty that Elizabeth regretted the consent she had given to their deaths.

§ 16. But while these scenes of pride and persecution on one hand, and of sectarian insolence on the other, were deforming the bosom of the English church, she found a defender of her institutions in one who mingled in these vulgar controversies like a knight of romance among caitiff brawlers, with arms of finer temper and worthy to be proved in a nobler field. Richard Hooker, master of the Temple, published the first four books of his "Ecclesiastical Polity" in 1594; the fifth, three years afterward; and, dying in 1600, left behind three which did not see the light till 1647. This eminent work may justly be reckoned to mark an era in our literature; for if passages of much good sense and even of a

[7] 35 Eliz., c. 1; Parl. Hist., 863.

vigorous eloquence are scattered in several earlier writers in prose, yet none of these, except perhaps Latimer and Ascham, and Sir Philip Sidney in his "Arcadia," can be said to have acquired enough reputation to be generally known even by name, much less are read in the present day; and it is, indeed, not a little remarkable that England until near the end of the sixteenth century had given few proofs in literature of that intellectual power which was about to develop itself with such unmatchable energy in Shakspeare and Bacon. We can not, indeed, place Hooker (but whom dare we to place?) by the side of these master-spirits; yet he has abundant claims to be counted among the luminaries of English literature. He not only opened the mine, but explored the depths, of our native eloquence. So stately and graceful is the march of his periods, so various the fall of his musical cadences upon the ear, so rich in images, so condensed in sentences, so grave and noble his diction, so little is there of vulgarity in his racy idiom, of pedantry in his learned phrase, that I know not whether any later writer has more admirably displayed the capacities of our language, or produced passages more worthy of comparison with the splendid monuments of antiquity. If we compare the first book of the "Ecclesiastical Polity" with what bears, perhaps, most resemblance to it of any thing extant—the treatise of Cicero de Legibus, it will appear somewhat, perhaps, inferior, through the imperfection of our language, which, with all its force and dignity, does not equal the Latin in either of these qualities, and certainly more tedious and diffuse in some of its reasonings, but by no means less high-toned in sentiment, or less bright in fancy, and far more comprehensive and profound in the foundations of its philosophy.[8]

§ 17. The prelates of the English church, while they inflicted so many severities on others, had not always cause to exult in their own condition. From the time when Henry taught his courtiers to revel in the spoil of monasteries there had been a perpetual appetite for ecclesiastical possessions. Endowed by a prodigal superstition with pomp and wealth beyond all reasonable measure, and far beyond what the new system of religion appeared to prescribe, the church of England still excited the covetousness of the powerful and the scandal of the austere. I have mentioned in another place how the bishoprics were impoverished in the first reformation under Edward VI. The catholic bishops who fol-

[8] For a further account of Hooker's "Ecclesiastical Polity," see NOTE at end of chapter.

lowed made haste to plunder, from a consciousness that the goods of their church were speedily to pass into the hands of heretics. Hence the alienation of their estates had gone so far that in the beginning of Elizabeth's reign statutes were made disabling ecclesiastical proprietors from granting away their lands except on leases for three lives, or twenty-one years. But an unfortunate reservation was introduced in favor of the crown. The queen, therefore, and her courtiers, who obtained grants from her, continued to prey upon their succulent victim. Few of her council imitated the noble disinterestedness of Walsingham, who spent his own estate in her service, and left not sufficient to pay his debts. The documents of that age contain ample proofs of their rapacity. Thus Cecil surrounded his mansion-house at Burleigh with estates once belonging to the see of Peterborough. Thus Hatton built his house in Holborn on the bishop of Ely's garden. Cox, on making resistance to this spoliation, received a singular epistle from the queen.[9] This bishop, in consequence of such vexations, was desirous of retiring from the see before his death. After that event Elizabeth kept it vacant eighteen years. During this period we have a petition to her from lord-keeper Puckering that she would confer it on Scambler, bishop of Norwich, then eighty-eight years old, and notorious for simony, in order that he might give him a lease of part of the lands. These transactions denote the mercenary and rapacious spirit which leavened almost all Elizabeth's courtiers.

The bishops of this reign do not appear, with some distinguished exceptions, to have reflected so much honor on the established church as those who attach a superstitious reverence to the age of the Reformation are apt to conceive. In the plunder that went forward they took good care of themselves. Charges against them of simony, corruption, covetousness, and especially destruction of their church estates for the benefit of their families, are very common—sometimes no doubt unjust, but too frequent to be absolutely without foundation. The council often wrote to them, as well as concerning them, with a sort of asperity which would astonish one of their successors. And the queen never restrained

[9] It was couched in the following terms:

"Proud Prelate,—You know what you were before I made you what you are: if you do not immediately comply with my request, by G— I will unfrock you.

"Elizabeth."

Poor Cox wrote a very good letter before this, printed in Strype's Annals, vol. ii., Append. 84. The names of Hatton Garden and Ely Place (Mantua væ miseræ nimium vicina Cremonæ) still bear witness to the encroaching lord-keeper and the elbowed bishop.

herself in treating them on any provocation with a good deal of rudeness, of which I have just mentioned an egregious example. In her speech to parliament on closing the session of 1584, when many complaints against the rulers of the church had rung in her ears, she told the bishops that, if they did not amend what was wrong, she meant to depose them. For there seems to have been no question in that age but that this might be done by virtue of the crown's supremacy.

The church of England was not left by Elizabeth in circumstances that demanded applause for the policy of her rulers. After forty years of constantly aggravated molestation of the non-conforming clergy, their numbers were become greater, their popularity more deeply rooted, their enmity to the established order more irreconcilable. The best apology that can be made for Elizabeth's tenaciousness of those ceremonies which produced this fatal contention I have already suggested, without much express authority from the records of that age—namely, the justice and expediency of winning over the catholics to conformity, by retaining as much as possible of their accustomed rites. But in the latter period of the queen's reign this policy had lost a great deal of its application, or rather the same principle of policy would have dictated numerous concessions in order to satisfy the people. It appears by no means unlikely that, by reforming the abuses and corruption of the spiritual courts, by abandoning a part of their jurisdiction, so heterogeneous and so unduly obtained, by abrogating obnoxious and at best frivolous ceremonies, by restraining pluralities of benefices, by ceasing to discountenance the most diligent ministers, and by more temper and disinterestedness in their own behavior, the bishops would have palliated, to an indefinite degree, that dissatisfaction with the established scheme of polity, which its want of resemblance to that of other protestant churches must more or less have produced.

NOTE TO CHAPTER IV.

HOOKER'S "ECCLESIASTICAL POLITY" (p. 126).

The advocates of a presbyterian church had always thought it sufficient to prove that it was conformable to the apostolical scheme as deduced merely from the Scriptures. A pious reverence for the sacred writings, which they made almost their exclusive study, had degenerated into very narrow views on the great themes of natural religion and the moral law, as deducible from reason and sentiment. These, as most of the various families of their descendants continue to do, they greatly slighted, or even treated as the mere chimeras of heathen philosophy. If they looked to the Mosaic law as the standard of criminal jurisprudence, if they sought precedents from Scripture for all matters of temporal policy, much more would they deem the practice of the Apostles an unerring and immutable rule for the discipline of the Christian church. To encounter these adversaries, Hooker took a far more original course than the ordinary controvertists, who fought their battles with conflicting interpretations of Scriptural texts or passages from the fathers. He inquired into the nature and foundation of law itself, as the rule of operation to all created beings, yielding thereto obedience by unconscious necessity, or sensitive appetite, or reasonable choice; reviewing especially those laws that regulate human agency, as they arise out of moral relations, common to our species, or the institutions of political societies, or the intercommunity of independent nations; and having thoroughly established the fundamental distinction between laws natural and positive, eternal and temporary, immutable and variable, he came with all this strength of moral philosophy to discriminate by the same criterion the various rules and precepts contained in the Scriptures. It was a kind of maxim among the puritans that Scripture was so much the exclusive rule of human actions that whatever, in matters at least concerning religion, could not be found to have its authority, was unlawful. Hooker devoted the whole second book of his work to the refutation of this principle. He proceeded afterward to attack its application more particularly to the episcopal scheme of church government, and to the various ceremonies or usages which those sectaries treated as either absolutely superstitious, or at least as impositions without authority. It was maintained by this great writer, not only that ritual observances are variable according to the discretion of ecclesiastical rulers, but that no certain form of polity is set down in Scripture as generally indispensable for a Christian church. Far, however, from conceding to his antagonists the fact which they assumed, he contended for episcopacy as an apostolical institution, and always preferable, when circumstances would allow its preservation, to the more democratical model of the Calvinistic congregations. "If we did seek," he says, "to maintain that which most advantageth our own cause, the very best way for us and the strongest against them were to hold, even as they do, that in Scripture there must needs be found some particular form of church polity which God had instituted, and which for that very cause belongeth to all churches at all times. But with any such partial eye to respect ourselves, and by cunning to make those things seem the truest which are the fittest to serve our purpose, is a thing which we neither like nor mean to follow."

The richness of Hooker's eloquence is chiefly displayed in his first book; beyond which, perhaps, few who want a taste for ecclesiastical reading are likely to proceed. The second and third, however, though less brilliant, are not inferior in force and comprehensiveness of reasoning. The eighth and last returns to the subject of civil government, and expands, with remarkable liberality, the principles he had laid down as to its nature in the first book. Those that intervene are mostly confined to a more minute discussion of the questions mooted between the church and puritans; and in these, as far as I have looked into them, though Hooker's argument is always vigorous and logical, and he seems to be exempt from that abusive insolence to which polemical writers were then even more prone than at present, yet he has not altogether the terseness or lucidity which long habits of literary warfare, and perhaps a natural turn of mind, have given to some expert dialecticians. In respect of language, the three posthumous books, partly from having never received the author's last touches, and partly, perhaps, from his weariness of the la-

bor, are beyond comparison less elegantly written than the preceding.

The better parts of the "Ecclesiastical Polity" bear a resemblance to the philosophical writings of antiquity, in their defects as well as their excellences. Hooker is often too vague in the use of general terms, too inconsiderate in the admission of principles, too apt to acquiesce in the scholastic pseudo-philosophy, and, indeed, in all received tenets; he is comprehensive rather than sagacious, and more fitted to sift the truth from the stores of accumulated learning than to seize it by an original impulse of his own mind; somewhat also impeded, like many other great men of that and the succeeding century, by too much acquaintance with books, and too much deference for their authors. It may be justly objected to some passages that they elevate ecclesiastical authority, even in matters of belief, with an exaggeration not easily reconciled to the protestant right of private judgment, and even of dangerous consequence in those times; as when he inclines to give a decisive voice in theological controversies to general councils; not, indeed, on the principles of the church of Rome, but on such as must end in the same conclusion, the high probability that the aggregate judgment of many grave and learned men should be well founded.* Nor would it be difficult to point out several other subjects, such as religious toleration, as to which he did not emancipate himself from the trammels of prejudice. But, whatever may be the imperfections of his "Ecclesiastical Polity," they are far more than compensated by its eloquence and its reasoning, and above all by that deep pervading sense of the relation between man and his Creator, as the groundwork of all eternal law, which rendered the first book of this work a rampart, on the one hand, against the puritan school who shunned the light of nature as a deceitful meteor; and, on the other, against that immoral philosophy which, displayed in the dark precepts of Machiavel, or lurking in the desultory sallies of Montaigne, and not always rejected by writers of more apparent seriousness, threatened to destroy the sense of intrinsic distinctions in the quality of actions, and to convert the maxims of statecraft and dissembling policy into the rule of life and manners.

Nothing, perhaps, is more striking to a reader of the "Ecclesiastical Polity" than the constant and even excessive predilection of Hooker for those liberal principles of civil government which are sometimes so just and always so attractive. Upon these subjects his theory absolutely coincides with that of Locke. The origin of government, both in right and in fact, he explicitly derives from a primary contract; "without which consent there were no reason that one should take upon him to be lord or judge over another; because, although there be, according to the opinion of some very great and judicious men, a kind of natural right in the noble, wise, and virtuous, to govern them which are of servile disposition, nevertheless, for manifestation of this their right, and men's more peaceable contentment on both sides, the assent of them who are to be governed seemeth necessary." "The lawful power," he observes elsewhere, "of making laws to command whole politic societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority received at first from their consent upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which public approbation hath not made so. But approbation not only they give, who personally declare their assent by voice, sign, or act; but also when others do it in their names, by right originally, at the least, derived from them. As in parliaments, councils, and the like assemblies, although we be not personally ourselves present, notwithstanding our assent is by reason of other agents there in our behalf. And what we do by others, no reason but that it should stand as our deed, no less effectually to bind us than if ourselves had done it in

* "If the natural strength of men's wit may by experience and study attain unto such ripeness in the knowledge of things human, that men in this respect may presume to build somewhat upon their judgment, what reason have we to think but that, even in matters divine, the like wits, furnished with necessary helps, exercised in Scripture with like diligence, and assisted with the grace of Almighty God, may grow unto so much perfection of knowledge, that men shall have just cause, when any thing pertinent unto faith and religion is doubted of, the more willingly to incline their minds toward that which the sentence of so grave, wise, and learned in that faculty shall judge most sound. For the controversy is of the weight of such men's judgment," etc. But Hooker's mistake was to exaggerate the weight of such men's judgment, and not to allow enough for their passions and infirmities, the imperfection of their knowledge, their connivance with power, their attachment to names and persons, and all the other drawbacks to ecclesiastical authority.

It is well known that the preface to the "Ecclesiastical Polity" was one of the two books to which James II. ascribed his return into the fold of Rome; and it is not difficult to perceive by what course of reasoning on the positions it contains this was effected.

person." And in another place still more peremptorily: "Of this thing no man doubteth, namely, that in all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents ratified. Against all equity it were that a man should suffer detriment at the hands of men for not observing that which he never did either by himself or others mediately or immediately agree unto."

These notions respecting the basis of political society, so far unlike what prevailed among the next generation of churchmen, are chiefly developed and dwelt upon in Hooker's concluding book, the eighth; and gave rise to a rumor, very sedulously propagated soon after the time of its publication, and still sometimes repeated, that the posthumous portion of his work had been interpolated or altered by the puritans. For this surmise, however, I am persuaded that there is no foundation. The three latter books are doubtless imperfect, and it is possible that verbal changes may have been made by their transcribers or editors; but the testimony that has been brought forward to throw a doubt over their authenticity consists in those vague and self-contradictory stories which gossiping compilers of literary anecdote can easily accumulate; while the intrinsic evidence arising from the work itself, on which in this branch of criticism I am apt chiefly to rely, seems altogether to repel every suspicion. For not only the principles of civil government, presented in a more expanded form by Hooker in the eighth book, are precisely what he laid down in the first; but there is a peculiar chain of consecutive reasoning running through it, wherein it would be difficult to point out any passages that could be rejected without dismembering the context. It was his business in this part of the "Ecclesiastical Polity" to vindicate the queen's supremacy over the church; and this he has done by identifying the church with the commonwealth; no one, according to him, being a member of the one who was not also a member of the other. But as the constitution of the Christian church, so far as the laity partook in its government, by choice of pastors or otherwise, was undeniably democratical, he labored to show, through the medium of the original compact of civil society, that the sovereign had received this, as well as all other powers, at the hands of the people. "Laws being made among us," he affirms, "are not by any of us so taken or interpreted as if they did receive their force from power which the prince doth communicate unto the parliament, or unto any other court under him, but from power which the whole body of the realm being naturally possessed with hath by free and deliberate assent derived unto him that ruleth over them so far forth as hath been declared; so that our laws made concerning religion do take originally their essence from the power of the whole realm and church of England."

In this system of Hooker and Locke, for it will be obvious to the reader that their principles were the same, there is much, if I am not mistaken, to disapprove. That no man can be justly bound by laws which his own assent has not ratified appears to me a position incompatible with the existence of society in its literal sense, or illusory in the sophistical interpretations by which it is usual to evade its meaning. It will be more satisfactory and important to remark the views which this great writer entertained of our own constitution, to which he frequently and fearlessly appeals, as the standing illustration of a government restrained by law. "I can not choose," he says, "but commend highly their wisdom, by whom the foundation of the commonwealth hath been laid; wherein, though no manner of person or cause be unsubject unto the king's power, yet so is the power of the king over all, and in all, limited, that unto all his proceedings the law itself is a rule. The axioms of our regal government are these: 'Lex facit regem'—the king's grant of any favor made contrary to the law is void;—'Rex nihil potest nisi quod jure potest'—what power the king hath he hath it by law: the bounds and limits of it are known, the entire community giveth general order by law how all things publicly are to be done; and the king as the head thereof, the highest in authority over all, causeth, according to the same law, every particular to be framed and ordered thereby. The whole body politic maketh laws, which laws give power, unto the king; and the king having bound himself to use according to law that power, it so falleth out that the execution of the one is accomplished by the other." These doctrines of limited monarchy recur perpetually in the eighth book; and though Hooker, as may be supposed, does not enter upon the perilous question of resistance, and even intimates that he does not see how the people can limit the extent of power once granted, unless where it escheats to them, yet he positively lays it down that usurpers of power, that is, lawful rulers arrogating more than the law

gives to them, can not in conscience bind any man to obedience.

It would, perhaps, have been a deviation from my subject to enlarge so much on these political principles in a writer of any later age, when they had been openly sustained in the councils of the nation. But as the reigns of the Tudor family were so inauspicious to liberty that some have been apt to imagine its recollection to have been almost effaced, it becomes of more importance to show that absolute monarchy was, in the eyes of so eminent an author as Hooker, both pernicious in itself and contrary to the fundamental laws of the English commonwealth. Nor would such sentiments, we may surely presume, have been avowed by a man of singular humility, and whom we might charge with somewhat of an excessive deference to authority, unless they had obtained more currency, both among divines and lawyers, than the complaisance of courtiers in these two professions might lead us to conclude; Hooker being not prone to deal in paradoxes, nor to borrow from his adversaries that sturdy republicanism of the school of Geneva which had been their scandal. I can not, indeed, but suspect that his whig principles in the last book are announced with a temerity that would have startled his superiors; and that its authenticity, however called in question, has been better preserved by the circumstance of a posthumous publication than if he had lived to give it to the world. Whitgift would probably have induced him to suppress a few passages incompatible with the servile theories already in vogue. It is far more usual that an author's genuine sentiments are perverted by means of his friends and patrons than of his adversaries.

CHAPTER V.

ON THE CIVIL GOVERNMENT OF ELIZABETH.

§ 1. General Remarks. § 2. Defective Security of the Subject's Liberty. § 3. Trials for Treason and other Political Offenses unjustly conducted. § 4. Illegal Commitments. § 5. Proclamations unwarranted by Law. § 6. Restrictions on Printing. § 7. Martial Law. § 8. Loans of Money not quite voluntary. § 9. Character of Lord Burleigh's Administration. § 10. Disposition of the House of Commons. § 11. Addresses concerning the Succession. Difference on this between the Queen and Commons in 1566. § 12. Session of 1571. Influence of the Puritans in Parliament. § 13. Session of 1572. § 14. Speech of Mr. Wentworth in 1576. The Commons continue to seek Redress of Ecclesiastical Grievances. § 15. Also of Monopolies, especially in the Session of 1601. § 16. Influence of the Crown in Parliament. § 17. Debate on Election of non-resident Burgesses. § 18. Assertion of Privileges by Commons. Case of Ferrers, under Henry VIII. Other cases of Privilege. § 19. Privilege of determining contested Elections claimed by the House. § 20. The English Constitution not admitted to be an absolute Monarchy. § 21. Pretensions of the Crown.

§ 1. The subject of the last two chapters, I mean the policy adopted by Elizabeth for restricting the two religious parties which from opposite quarters resisted the exercise of her ecclesiastical prerogatives, has already afforded us many illustrations of what may more strictly be reckoned the constitutional history of her reign. The tone and temper of her administration have been displayed in a vigilant execution of severe statutes, especially toward the catholics, and sometimes in stretches of power beyond the law. And as Elizabeth had no domestic enemies or refractory subjects who did not range under one or other of these two sects, and little disagreement with her people on any other grounds, the ecclesiastical history of this period is the best preparation for our inquiry into the civil government. In the present chapter I shall first offer a short view of the practical exercise of government in this reign, and then proceed to show how the queen's high assumptions of prerogative were encountered by a resistance in parliament, not quite uniform, but insensibly becoming more vigorous.

§ 2. Elizabeth ascended the throne with all the advantages of a very extended authority. Though the jurisdiction actually exerted by the court of star-chamber could not be vindicated according to statute law, it had been so well established as to pass without many audible murmurs. Her progenitors had intimidated the nobility; and if she had something to fear at one season from this order, the fate of the

duke of Norfolk and of the rebellious earls in the north put an end forever to all apprehension from the feudal influence of the aristocracy. There seems no reason to believe that she attempted a more absolute power than her predecessors; the wisdom of her councilors, on the contrary, led them generally to shun the more violent measures of the late reigns; but she certainly acted upon many of the precedents they had bequeathed her, with little consideration of their legality. Her own remarkable talents, her masculine intrepidity, her readiness of wit and royal deportment, which the bravest men unaffectedly dreaded, her temper of mind, above all, at once fiery and inscrutably dissembling, would in any circumstances have insured her more real sovereignty than weak monarchs, however nominally absolute, can ever enjoy or retain. To these personal qualities was added the co-operation of some of the most diligent and circumspect, as well as the most sagacious councilors that any prince has employed; men as unlikely to loose from their grasp the least portion of that authority which they found themselves to possess, as to excite popular odium by an unusual or misplaced exertion of it. The most eminent instances, as I have remarked, of a high-strained prerogative in her reign have some relation to ecclesiastical concerns; and herein the temper of the predominant religion was such as to account no measures harsh or arbitrary that were adopted toward its conquered but still formidable enemy. Yet when the royal supremacy was to be maintained against a different foe by less violent acts of power, it revived the smouldering embers of English liberty. The stern and exasperated puritans became the depositaries of that sacred fire; and this manifests a second connection between the temporal and ecclesiastical history of the present reign.

Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of parliament, without let or interruption, to inquire into and obtain the redress of public grievances. Of these the first is by far the most indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom where this condition is not found both in its judicial institutions and in their constant exercise. In this, much more than in positive law, our ancient constitution, both under the Plantagenet and Tudor line, had ever been failing; and it is because one set of writers have looked merely to the letter of our statutes or other authorities, while another have been

almost exclusively struck by the instances of arbitrary government they found on record, that such incompatible systems have been laid down with equal positiveness on the character of that constitution.

§ 3. I have found it impossible not to anticipate, in more places than one, some of those glaring transgressions of natural as well as positive law that rendered our courts of justice in cases of treason little better than the caverns of murderers. Whoever was arraigned at their bar was almost certain to meet a virulent prosecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive pusillanimous jury. Those who are acquainted only with our modern decent and dignified procedure can form little conception of the irregularity of ancient trials; the perpetual interrogation of the prisoner, which gives most of us so much offense at this day in the tribunals of a neighboring kingdom; and the want of all evidence except written, perhaps unattested, examinations or confessions.

The integrity of judges is put to the proof as much by prosecutions for seditious writings as by charges of treason. I have before mentioned the convictions of Udal and Penry for a felony created by the 23d of Elizabeth; the former of which especially must strike every reader of the trial as one of the gross judicial iniquities of this reign. But before this sanguinary statute was enacted, a punishment of uncommon severity had been inflicted upon one Stubbe, a puritan lawyer, for a pamphlet against the queen's intended marriage with the duke of Anjou. It will be in the recollection of most of my readers that, in the year 1579, Elizabeth exposed herself to much censure and ridicule, and inspired the justest alarm in her most faithful subjects, by entertaining, at the age of forty-six, the proposals of this young scion of the house of Valois. Her council, though several of them in their deliberations had much inclined against the preposterous alliance, yet in the end, displaying the compliance usual with the servants of self-willed princes, agreed, "conceiving," as they say, "her earnest disposition for this her marriage," to further it with all their power. Sir Philip Sidney, with more real loyalty, wrote her a spirited remonstrance, which she had the magnanimity never to resent. But she poured her indignation on Stubbe, who, not entitled to use a private address, had ventured to arouse a popular cry in his "Gaping Gulph, in which England will be swallowed up by the French Marriage." This pamphlet is very far from being, what some have ignorantly or unjustly called it, a virulent libel, but is

written in a sensible manner, and with unfeigned loyalty and affection toward the queen. But besides the main offense of addressing the people on state affairs, he had, in the simplicity of his heart, thrown out many allusions proper to hurt her pride, such as dwelling too long on the influence her husband would acquire over her, and imploring that she would ask her physicians whether to bear children at her years would not be highly dangerous to her life. Stubbe, for writing this pamphlet, received sentence to have his right hand cut off. When the penalty was inflicted, taking off his hat with his left, he exclaimed, "Long live queen Elizabeth!" Burleigh, who knew that his fidelity had borne so rude a test, employed him afterward in answering some of the popish libelers.

There is no room for wonder at any verdict that could be returned by a jury when we consider what means the government possessed of securing it. The sheriff returned a panel, either according to express directions, of which we have proofs, or to what he judged himself of the crown's intention and interest. If a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the star-chamber; lucky if they should escape, on humble retractation, with sharp words, instead of enormous fines and indefinite imprisonment. The control of this arbitrary tribunal bound down and rendered impotent all the minor jurisdictions. Until this weight that hung upon the constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which it held forth.

§ 4. It can not be too frequently repeated that no power of arbitrary detention has ever been known to our constitution since the charter obtained at Runnymede. The writ of habeas corpus has always been a matter of right. But, as may naturally be imagined, no right of the subject, in his relation to the crown, was preserved with greater difficulty. Not only the privy council in general arrogated to itself a power of discretionary imprisonment, into which no inferior court was to inquire, but commitments by a single councilor appear to have been frequent. These abuses gave rise to a remarkable complaint of the judges, which, though an authentic recognition of the privilege of personal freedom against such irregular and oppressive acts of individual ministers, must be admitted to leave by far too great latitude to the executive government, and to surrender, at least by implication from rather obscure language, a great part of the lib-

erties which many statutes had confirmed. This is contained in a passage from Chief-Justice Anderson's "Reports."[1]

§ 5. It was a natural consequence, not more of the high notions entertained of prerogative than of the very irregular and infrequent meeting of parliament, that an extensive and somewhat indefinite authority should be arrogated to proclamations of the king in council. It seems, by the proclamations issued under Elizabeth, that the crown claimed a sort of supplemental right of legislation, to perfect and carry into effect what the spirit of existing laws might require, as well as a paramount supremacy, called sometimes the king's absolute or sovereign power, which sanctioned commands beyond the legal prerogative, for the sake of public safety, whenever the council might judge that to be in hazard. Thus we find anabaptists, without distinction of natives or aliens, banished the realm; Irishmen commanded to depart into Ireland; the culture of woad, and the exportation of corn, money, and various commodities prohibited; the excess of apparel restrained. A proclamation in 1580 forbids the erection of houses within three miles of London, on account of the too great increase of the city, under the penalty of imprisonment and forfeiture of the materials. This is repeated at other times, and lastly (I mean during her reign) in 1602, with additional restrictions. Some proclamations in this reign hold out menaces which the common law could never have executed on the disobedient. To trade with the French king's rebels, or to export victuals into the Spanish dominions (the latter of which might possibly be construed into assisting the queen's enemies), incurred the penalty of treason. And persons having in their possession goods taken on the high seas, which had not paid customs, are enjoined to give them up, on pain of being punished as felons and pirates. Notwithstanding these instances, it can not perhaps be said, on the whole, that Elizabeth stretched her authority very outrageously in this respect. Many of her proclamations, which may at first sight appear illegal, are warrantable by statutes then in force, or by ancient precedents. Thus the council is empowered by an act, 28 H. VIII., c. 14, to fix the prices of wines; and abstinence from flesh in Lent, as well as on Fridays and Saturdays (a common subject of Elizabeth's proclamations), is enjoined by several statutes of Edward VI. and of her own. And it has been argued by some not at all inclined to diminish any popular rights, that the king did

[1] Printed in Note at the end of this chapter.

possess a prerogative by common law of restraining the export of corn and other commodities.

§ 6. It is natural to suppose that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free inquiry through the press. The trades of printing and book-selling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors,[2] the council frequently issued proclamations to restrain the importation of books, or to regulate their sale.[3] It was penal to utter, or so much as to possess, even the most learned works on the catholic side; or if some connivance was usual in favor of educated men, the utmost strictness was used in suppressing that light infantry of literature, the smart and vigorous pamphlets with which the two parties arrayed against the church assaulted her opposite flanks. Stow, the well-known chronicler of England, who lay under suspicion of an attachment to popery, had his library searched by warrant, and his unlawful books taken away; several of which were but materials for his history. Whitgift, in this, as in every other respect, aggravated the rigor of preceding times. At his instigation the star-chamber, 1585, published ordinances for the regulation of the press. The preface to these recites "enormities and abuses of disorderly persons professing the art of printing and selling books" to have more and more increased in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer, therefore, is enjoined to certify his presses to the Stationers' Company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer who has only set up his trade within six months to exercise it any longer, nor any to begin it in future until the excessive multitude of printers be diminished and brought to such a number as the archbishop of Canterbury and bishop of London for the time being shall think convenient; but whenever any addition to the number of master-printers shall be required, the Stationers' Company shall select proper persons to use

[2] We find an exclusive privilege granted in 1563 to Thomas Cooper, afterward bishop of Winchester, to print his Thesaurus, or Latin dictionary, for twelve years—Rymer, xv., 620; and to Richard Wright to print his translation of Tacitus during his natural life; any one infringing this privilege to forfeit 40s. for every printed copy. Id., xvi., 97.

[3] Strype's Parker, 221. By the 51st of the queen's injunctions, in 1559, no one might print any book or paper whatsoever unless the same be first licensed by the council or ordinary.

that calling with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the archbishop of Canterbury or bishop of London, except the queen's printer, to be appointed for some special service, or law-printers, who shall require the license only of the chief justices. Every one selling books printed contrary to the intent of this ordinance to suffer three months' imprisonment. The Stationers' Company empowered to search houses and shops of printers and book-sellers, and to seize all books printed in contravention of this ordinance, to destroy and deface the presses, and to arrest and bring before the council those who shall have offended therein.

§ 7. The forms of English law, however inadequate to defend the subject in state prosecutions, imposed a degree of seeming restraint on the crown, and wounded that pride which is commonly a yet stronger sentiment than the lust of power with princes and their counselors. It was possible that juries might absolve a prisoner; it was always necessary that they should be the arbiters of his fate. There may indeed be times of pressing danger, when the conservation of all demands the sacrifice of the legal rights of a few; there may be circumstances that not only justify, but compel, the temporary abandonment of constitutional forms. It has been usual for all governments, during an actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction. But it is of high importance to watch with extreme jealousy the disposition toward which most governments are prone, to introduce too soon, to extend too far, to retain too long, so perilous a remedy. In the fourteenth and fifteenth centuries the court of the constable and marshal, whose jurisdiction was considered as of a military nature, and whose proceedings were not according to the course of the common law, sometimes tried offenders by what was called martial law, but only, I believe, either during, or not long after, a serious rebellion. This tribunal fell into disuse under the Tudors. But Mary had executed some of those taken in Wyatt's insurrection without regular process, though their leader had his trial by a jury. Elizabeth, always hasty in passion and quick to punish, would have resorted to this summary course on a slighter occasion. One Peter Burchell, a fanatical puritan, and perhaps insane, conceiving that Sir Christopher Hatton was an enemy to true religion, determined to assassinate him. But by mistake he wounded instead a famous seaman, captain Hawkins. For this ordinary

crime the queen could hardly be prevented from directing him to be tried instantly by martial law. Her council, however (and this it is important to observe), resisted this illegal proposition with spirit and success. We have indeed a proclamation some years afterward, declaring that such as brought into the kingdom or dispersed papal bulls, or traitorous libels against the queen, should with all severity be proceeded against by her majesty's lieutenants or their deputies by martial law, and suffer such pains and penalties as they should inflict; and that none of her said lieutenants or their deputies be in any wise impeached, in body, lands, or goods, at any time hereafter, for any thing to be done or executed in the punishment of any such offender, according to the said martial law, and the tenor of this proclamation, any law or statute to the contrary in any wise notwithstanding. This measure, though by no means constitutional, finds an apology in the circumstances of the time. It bears date the 1st of July, 1588, when within the lapse of a few days the vast armament of Spain might effect a landing upon our coasts; and prospectively to a crisis when the nation, struggling for life against an invader's grasp, could not afford the protection of law to domestic traitors. But it is an unhappy consequence of all deviations from the even course of law, that the forced acts of overruling necessity come to be distorted into precedents to serve the purposes of arbitrary power. No other measure of Elizabeth's reign can be compared, in point of violence and illegality, to a commission in July, 1595, directed to sir Thomas Wilford, whereby, upon no other allegation than that there had been of late "sundry great unlawful assemblies of a number of base people in riotous sort, both in the city of London and the suburbs, for the suppression whereof (for that the insolency of many desperate offenders is such that they care not for any ordinary punishment by imprisonment) it was found necessary to have some such notable rebellious persons to be speedily suppressed by execution to death, according to the justice of martial law," he is appointed provost-martial, with authority, on notice by the magistrates to attach and seize such notable rebellious and incorrigible offenders, and in the presence of the magistrates to execute them openly on the gallows.

This peremptory style of superseding the common law was a stretch of prerogative without an adequate parallel, so far as I know, in any former period. It is to be remarked that no tumults had taken place of any political character or of serious importance, some riotous apprentices only having com-

mitted a few disorders. But rather more than usual suspicion had been excited about the same time by the intrigues of the jesuits in favor of Spain, and the queen's advanced age had begun to renew men's doubts as to the succession. Circumstances of which we are ignorant, I do not question, gave rise to this extraordinary commission. The executive government in modern times has been invested with a degree of coercive power to maintain obedience of which our ancestors, in the most arbitrary reigns, had no practical experience. If we reflect upon the multitude of statutes enacted since the days of Elizabeth in order to restrain and suppress disorder, and above all, on the prompt and certain aid that a disciplined army affords to our civil authorities, we may be inclined to think that it was rather the weakness than the vigor of her government which led to its inquisitorial watchfulness and harsh measures of prevention.

§ 8. Amidst so many infringements of the freedom of commerce, and with so precarious an enjoyment of personal liberty, the English subject continued to pride himself in his immunity from taxation without consent of parliament. This privilege he had asserted, though not with constant success, against the rapacity of Henry VII. and the violence of his son. Nor was it ever disputed in theory by Elizabeth. She retained, indeed, notwithstanding the complaints of the merchants at her accession, a custom upon cloths, arbitrarily imposed by her sister, and laid one herself upon sweet wines. But she made no attempt at levying internal taxes. By dint of singular frugality she continued to steer the true course, so as to keep her popularity undiminished and her prerogative unimpaired—asking very little of her subjects' money in parliaments, and being hence enabled both to have long breathing times between their sessions, and to meet them without coaxing or wrangling, till, in the latter years of her reign, a foreign war and a rebellion in Ireland, joined to a rapid depreciation in the value of money, rendered her demands somewhat higher. But she did not abstain from the ancient practice of sending privy-seals to borrow money of the wealthy. These were not considered as illegal, though plainly forbidden by the statute of Richard III., for it was the fashion to set aside the anthority of that act, as having been passed by an usurper. It is impossible to doubt that such loans were so far obtained by compulsion, that any gentleman or citizen of sufficient ability refusing compliance would have discovered that it was far better to part with his money than to incur the council's displeasure. We have

indeed a letter from a lord mayor to the council, informing them that he had committed to prison some citizens for refusing to pay the money demanded of them. But the queen seems to have been punctual in their speedy repayment according to stipulation, a virtue somewhat unusual with royal debtors. Such loans were but an anticipation of her regular revenue, and no great hardship on rich merchants, who, if they got no interest for their money, were recompensed with knighthoods and gracious words. And as Elizabeth incurred no debt till near the conclusion of her reign, it is probable that she never had borrowed more than she was sure to repay.

A letter quoted by Hume from lord Burleigh's papers, though not written by him, as the historian asserts, and somewhat obscure in its purport, appears to warrant the conclusion that he had revolved in his mind some project of raising money by a general contribution or benevolence from persons of ability, without purpose of repayment. This was also amidst the difficulties of the year 1569, when Cecil perhaps might be afraid of meeting parliament, on account of the factions leagued against himself. But as nothing further was done in this matter, we must presume that he perceived the impracticability of so unconstitutional a scheme.[4]

§ 9. Those whose curiosity has led them to somewhat more acquaintance with the details of English history under Elizabeth than the pages of Camden or Hume will afford, can not but have been struck with the perpetual interference of men in power with matters of private concern. I am far from pretending to know how far the solicitations for a prime minister's aid and influence may extend at present. Yet one may think that he would hardly be employed, like Cecil, where he had no personal connection, in reconciling family quarrels, interceding with a landlord for his tenant, or persuading a rich citizen to bestow his daughter on a young lord. We are sure, at least, that he would not use the air of authority upon such occasions. The large collection of lord Burleigh's letters in the Museum is full of such petty matters. They exhibit, however, collectively, a curious view of the manner in which England was managed, as if it had been the household and estate of a nobleman under a strict and prying steward. We are told that the relaxation of this minister's mind was to study the state of England and the pedigrees of its nobility and gentry; of these last he drew

[4] Hume has exaggerated this, like other facts, in his very able, but partial, sketch of the constitution in Elizabeth's reign.

whole books with his own hands, so that he was better versed in descents and families than most of the heralds, and would often surprise persons of distinction at his table by appearing better acquainted with their manors, parks, and woods, than themselves. Such knowledge was not sought by the crafty Cecil for mere diversion's sake. It was a main part of his system to keep alive in the English gentry a persuasion that his eye was upon them. No minister was ever more exempt from that false security which is the usual weakness of a court. His failing was rather a bias toward suspicion and timidity; there were times, at least, in which his strength of mind seems to have almost deserted him through sense of the perils of his sovereign and country. But those perils appear less to us who know how the vessel outrode them, than they could do to one harassed by continual informations of those numerous spies whom he employed both at home and abroad. The one word of Burleigh's policy was prevention; and this was dictated by a consciousness of wanting an armed force or money to support it, as well as by some uncertainty as to the public spirit in respect at least of religion. But a government that directs its chief attention to prevent offenses against itself is in its very nature incompatible with that absence of restraint, that immunity from suspicion, in which civil liberty, as a tangible possession, may be said to consist. It appears probable that Elizabeth's administration carried too far, even as a matter of policy, this precautionary system upon which they founded the penal code against popery; and we may surely point to a contrast very advantageous to our modern constitution in the lenient treatment which the Jacobite faction experienced from the princes of the house of Hanover. She reigned, however, in a period of real difficulty and danger. At such season few ministers will abstain from arbitrary actions, except those who are not strong enough to practice them.

§ 10. I have traced, in another work, the acquisition by the house of commons of a practical right to inquire into and advise upon the public administration of affairs during the reigns of Edward III., Richard II., and the princes of the line of Lancaster. This energy of parliament was quelled by the civil wars of the fifteenth century; and, whatever may have passed in debates within its walls that have not been preserved, did not often display itself in any overt act under the first Tudors. To grant subsidies which could not be raised by any other course, to propose statutes which were not binding without their consent, to consider of public

grievances, and to procure their redress either by law or petition to the crown, were their acknowledged constitutional privileges, which no sovereign or minister ever pretended to deny. For this end liberty of speech and free access to the royal person were claimed by the speaker as customary privileges (though not quite, in his modern language, as undoubted rights) at the commencement of every parliament. But the house of commons in Elizabeth's reign contained men of a bold and steady patriotism, well read in the laws and records of old time, sensible to the dangers of their country and abuses of government, and conscious that it was their privilege and their duty to watch over the common weal. This led to several conflicts between the crown and parliament, wherein, if the former often asserted the victory, the latter sometimes kept the field, and was left on the whole a gainer at the close of the campaign.

The extant documents from which we draw our knowledge of constitutional history under the four preceding reigns are so scanty, that instances even of a successful parliamentary resistance to measures of the crown may have left no memorial. The debates of parliament are not preserved, and very little is to be gained from such histories as the age produced. The complete barrenness indeed of Elizabeth's chroniclers, Hollingshed and Thin, as to every parliamentary or constitutional information, speaks of itself the jealous tone of her administration. Camden, writing to the next generation, though far from an ingenuous historian, is somewhat less under restraint. This forced silence of history is much more to be suspected after the use of printing and the Reformation than in the ages when monks compiled annals in their convents, reckless of the censure of courts, because independent of their permission. Grosser ignorance of public transactions is undoubtedly found in the chronicles of the middle ages; but far less of that deliberate mendacity, or of that insidious suppression, by which fear, and flattery, and hatred, and the thirst of gain, have, since the invention of printing, corrupted so much of historical literature throughout Europe. We begin, however, to find in Elizabeth's reign more copious and unquestionable documents for parliamentary history. The regular journals indeed are partly lost; nor would those which remain give us a sufficient insight into the spirit of parliament without the aid of other sources. But a volume called "Sir Simon D'Ewes's Journal," part of which is copied from a manuscript of Heywood Townsend, a member of all parliaments

from 1580 to 1601, contains minutes of the most interesting debates as well as transactions, and for the first time renders us acquainted with the names of those who swayed an English house of commons.

§ 11. There was no peril more alarming to this kingdom during the queen's reign than the precariousness of her life—a thread whereon its tranquillity, if not its religion and independence, was suspended. Hence the commons felt it an imperious duty not only to recommend her to marry, but, when this was delayed, to solicit that some limitations of the crown might be enacted in failure of her issue. The former request she evaded without ever manifesting much displeasure, though not sparing a hint that it was a little beyond the province of parliament. Upon the last occasion indeed that it was preferred, namely, by the speaker in 1575, she gave what from any other woman must have appeared an assent, and almost a promise. But about declaring the succession she was always very sensible. Through a policy not perhaps entirely selfish, and certainly not erroneous on selfish principles, she was determined never to pronounce among the possible competitors for the throne. Least of all could she brook the intermeddling of parliament in such a concern. The commons first took up this business in 1562, when there had begun to be much debate in the nation about the opposite titles of the queen of Scots and lady Catherine Grey; and especially in consequence of a dangerous sickness the queen had just experienced, and which is said to have been the cause of summoning parliament. Their language is wary, praying her only by "proclamation of certainty already provided, if any such be," alluding to the will of Henry VIII., "or else by limitations of certainty, if none be, to provide a most gracious remedy in this great necessity." Elizabeth gave them a tolerably courteous answer, though not without some intimation of her dislike to this address. But at their next meeting, which was not till 1566, the hope of her own marriage having grown fainter, and the circumstances of the kingdom still more powerfully demanding some security, both houses of parliament united, with a boldness of which there had perhaps been no example for more than a hundred years, to overcome her repugnance. Some of her own council among the peers are said to have asserted in their places that the queen ought to be obliged to take a husband, or that a successor should be declared by parliament against her will. She was charged with a disregard to the state and to posterity. But this great princess wanted

not skill and courage to resist this unusual importunity of parliament. The peers, who had forgotten their customary respectfulness, were excluded the presence-chamber till they made their submission. She prevailed on the commons, through her ministers who sat there, to join a request for her marriage with the more unpalatable alternative of naming her successor; and when this request was presented, gave them fair words and a sort of assurance that their desires should by some means be fulfilled. When they continued to dwell on the same topic in their speeches, she sent messages through her ministers, and at length a positive injunction through the speaker, that they should proceed no farther in the business. The house, however, was not in a temper for such ready acquiescence as it sometimes displayed. Paul Wentworth, a bold and plain-spoken man, moved to know whether the queen's command and inhibition that they should no longer dispute of the matter of succession, were not against their liberties and privileges. This caused, as we are told, long debates, which do not appear to have terminated in any resolution. But, more probably having passed than we know at present, the queen, whose haughty temper and tenaciousness of prerogative were always within check of her discretion, several days after announced through the speaker that she revoked her two former commandments; "which revocation," says the journal, "was taken by the house most joyfully, with hearty prayer and thanks for the same." At the dissolution of this parliament, which was perhaps determined upon in consequence of their steadiness, Elizabeth alluded, in addressing them, with no small bitterness to what had occurred.

This is the most serious disagreement on record between the crown and the commons since the days of Richard II. and Henry IV. Doubtless the queen's indignation was excited by the nature of the subject her parliament ventured to discuss, still more than by her general disapprobation of their interference in matters of state. It was an endeavor to penetrate the great secret of her reign, in preserving which she conceived her peace, dignity, and personal safety to be bound up. And if, as Cecil seems justly to have thought, no limitations of the crown could at that time have been effected without much peril and inconvenience, we may find some apology for her warmth about their precipitation in a business which, even according to our present constitutional usage, it would naturally be for the government to bring forward. It is to be collected from Wentworth's motion, that

to deliberate on subjects affecting the commonwealth was reckoned, by at least a large part of the house of commons, one of their ancient privileges and liberties. This was not one which Elizabeth, however she had yielded for the moment in revoking her prohibition, ever designed to concede to them. Such was her frugality, that, although she had remitted a subsidy granted in this session, alleging the very honorable reason that, knowing it to have been voted in expectation of some settlement of the succession, she would not accept it when that implied condition had not been fulfilled, she was able to pass five years without again convoking her people.

§ 12. A parliament met in April, 1571, when the lord-keeper Bacon, in answer to the speaker's customary request for freedom of speech in the commons, said that "her majesty having experience of late of some disorder and certain offenses, which, though they were not punished, yet were they offenses still, and so must be accounted, they would therefore do well to meddle with no matters of state but such as should be propounded unto them, and to occupy themselves in other matters concerning the commonwealth."

The commons so far attended to this intimation that no proceedings about the succession appear to have taken place in this parliament, except such as were calculated to gratify the queen. We may perhaps except a bill attainting the queen of Scots, which was rejected in the upper house. But they entered for the first time on a new topic, which did not cease for the rest of this reign to furnish matter of contention with their sovereign. The party called puritan, including such as charged abuses on the actual government of the church, as well as those who objected to part of its lawful discipline, had, not a little in consequence of the absolute exclusion of the catholic gentry, obtained a very considerable strength in the commons. But the queen valued her ecclesiastical supremacy more than any part of her prerogative. Next to the succession of the crown, it was the point she could least endure to be touched. The house had indeed resolved, upon reading a bill the first time for reformation of the "Common Prayer," that petition be made to the queen's majesty for her license to proceed in it before it should be further dealt in. But Strickland, who had proposed it, was sent for to the council, and restrained from appearing again in his place, though put under no confinement. This was noticed as an infringement of their liberties. The ministers endeavored to excuse his detention, as not intended to lead

to any severity, nor occasioned by any thing spoken in that house, but on account of his introducing a bill against the prerogative of the queen, which was not to be tolerated. And instances were quoted of animadversion on speeches made in parliament. But Mr. Yelverton maintained that all matters not treasonable, nor too much to the derogation of the imperial crown, were tolerable there, where all things came to be considered, and where there was such fullness of power as even the right of the crown was to be determined, which it would be high treason to deny. Princes were to have their prerogatives, but yet to be confined within reasonable limits. The queen could not of herself make laws, neither could she break them. This was the true voice of English liberty, not so new to men's ears as Hume has imagined, though many there were who would not forfeit the court's favor by uttering it. In the affair of Strickland it became so evident that the commons would at least address the queen to restore him, that she adopted the course her usual prudence indicated, and permitted his return to his house. But she took the reformation of ecclesiastical abuses out of their hands, sending word that she would have some articles for that purpose executed by the bishops under her royal supremacy, and not dealt in by parliament. This did not prevent the commons from proceeding to send up some bills in the upper house, where, as was natural to expect, they fell to the ground.

This session is also remarkable for the first marked complaints against some notorious abuses which defaced the civil government of Elizabeth. A member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, and Mr. Bell said that licenses granted by the crown and other abuses galled the people, intimating also that the subsidy should be accompanied by a redress of grievances. This occasion of introducing the subject, though strictly constitutional, was likely to cause displeasure. The speaker informed them a few days after of a message from the queen to spend little time in motions, and make no long speeches. And Bell, it appears, having been sent for by the council, came into the house "with such an amazed countenance, that it daunted all the rest," who for many days durst not enter on any matter of importance. It became the common whisper, that no one must speak against licenses, lest the queen and council should be angry. And, at the close of the session, the lord-keeper severely reprimanded those audacious, arrogant, and pre-

sumptuous members, who had called her majesty's grants and prerogatives in question, meddling with matters neither pertaining to them, nor within the capacity of their understanding.

§ 13. The parliament of 1572 seemed to give evidence of their inheriting the spirit of the last by choosing Mr. Bell for their speaker.[5] But very little of it appeared in their proceedings. In their first short session, chiefly occupied by the business of the queen of Scots, the most remarkable circumstances are the following. The commons were desirous of absolutely excluding Mary from inheriting the crown, and even of taking away her life, and had prepared bills with this intent. But Elizabeth, constant to her mysterious policy, made one of her ministers inform them that she would neither have the queen of Scots enabled or disabled to succeed, and willed that the bill respecting her should be drawn by her council: and that in the mean time the house should not enter on any speeches or arguments on that matter. Another circumstance worthy of note in this session is a signification, through the speaker, of her majesty's pleasure that no bills concerning religion should be received, unless they should be first considered and approved by the clergy, and requiring to see certain bills touching rites and ceremonies that had been read in the house. The bills were accordingly ordered to be delivered to her, with a humble prayer that, if she should dislike them, she would not conceive an ill opinion of the house, or of the parties by whom they were preferred.

§ 14. The submissiveness of this parliament was doubtless owing to the queen's vigorous dealings with the last. At their next meeting, which was not till February, 1575–'6, Peter Wentworth, brother I believe of the person of that name before mentioned (p. 146), broke out, in a speech of uncommon boldness, against her arbitrary encroachments on their privileges. The liberty of free speech, he said, had in the last two sessions been so many ways infringed, that they were in danger, while they contented themselves with the name, of losing and foregoing the thing. It was common for a rumor to spread through that house, "the queen likes or dislikes such a matter; beware what you do." Messages were even sometimes brought down either commanding or

[5] Bell, I suppose, had reconciled himself to the court, which would have approved no speaker chosen without its recommendation. There was always an understanding between this servant of the house and the government. Proofs or presumptions of this are not unfrequent.

inhibiting, very injurious to the liberty of debate. He instanced that in the last session restraining the house from dealing in matters of religion; against which and against the prelates he inveighed with great acrimony. With still greater indignation he spoke of the queen's refusal to assent to the attainder of Mary; and, after surprising the house by the bold words, "none is without fault, no, not our noble queen, but has committed great and dangerous faults to herself," went on to tax her with ingratitude and unkindness to her subjects, in a strain perfectly free indeed from disaffection, but of more rude censure than any kings would put up with.

This direct attack upon the sovereign in matters relating to her public administration seems no doubt unparliamentary; though neither the rules of parliament in this respect, nor even the constitutional principle, were so strictly understood as at present. But it was part of Elizabeth's character to render herself extremely prominent, and, as it were, responsible in public esteem for every important measure of her government. It was difficult to consider a queen as acting merely by the advice of ministers who protested in parliament that they had labored in vain to bend her heart to their counsels. The doctrine that some one must be responsible for every act of the crown was yet perfectly unknown; and Elizabeth would have been the last to adopt a system so inglorious to monarchy. But Wentworth had gone to a length which alarmed the house of commons. They judged it expedient to prevent an unpleasant interference by sequestering their member, and appointing a committee of all the privy councilors in the house to examine him. Wentworth declined their authority, till they assured him that they sat as members of the commons and not as councilors. After a long examination, in which he not only behaved with intrepidity, but, according to his own statement, reduced them to confess the truth of all he advanced, they made a report to the house, who committed him to the Tower. He had lain there a month when the queen sent word that she remitted her displeasure toward him, and referred his enlargement to the house, who released him upon a reprimand from the speaker, and an acknowledgment of his fault upon his knees. In this commitment of Wentworth it can hardly be said that there was any thing, as to the main point, by which the house sacrificed its acknowledged privileges. In later instances, and even in the reign of George I., members have been committed for much less indecent reflections on the sovereign.

The queen had no reason, upon the whole, to be ill-pleased with this parliament, nor was she in haste to dissolve it, though there was a long intermission of its sessions. The next was in 1581, when the chancellor, on confirming a new speaker, did not fail to admonish him that the house of commons should not intermeddle in any thing touching her majesty's person or estate, or church government. They were supposed to disobey this injunction, and fell under the queen's displeasure, by appointing a public fast on their own authority, though to be enforced on none but themselves. This trifling resolution, which showed indeed a little of the puritan spirit, passed for an encroachment on the supremacy, and was only expiated by a humble apology. It is not till the month of February, 1587–'8, that the zeal for ecclesiastical reformation overcame in some measure the terrors of power, but with no better success than before. A Mr. Cope offered to the house, we are informed, a bill and a book, the former annulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of common prayer contained in the latter. The speaker interposed to prevent this bill from being read, on the ground that her majesty had commanded them not to meddle in this matter. Several members however spoke in favor of hearing it read, and the day passed in debate on this subject. Before they met again the queen sent for the speaker, who delivered up to her the bill and book. Next time that the house sat Mr. Wentworth insisted that some questions of his proposing should be read. These queries were to the following purport: "Whether this council was not a place for any member of the same, freely and without control, by bill or speech, to utter any of the griefs of this commonwealth? Whether there be any council that can make, add, or diminish from the laws of the realm, but only this council of parliament? Whether it be not against the orders of this council to make any secret or matter of weight, which is here in hand, known to the prince or any other, without consent of the house? Whether the speaker may overrule the house in any matter or cause in question? Whether the prince and state can continue and stand, and be maintained, without this council of parliament, not altering the government of the state?" These questions sergeant Pickering, the speaker, instead of reading them to the house, showed to a courtier, through whose means Wentworth was committed to the Tower. Mr. Cope, and those who had spoken in favor of his motion, underwent the same fate; and notwithstanding some notice

taken of it in the house, it does not appear that they were set at liberty before its dissolution, which ensued in three weeks.

Elizabeth, whose reputation for consistency, which haughty princes overvalue, was engaged in protecting the established hierarchy, must have experienced not a little vexation at the perpetual recurrence of complaints which the unpopularity of that order drew from every parliament. The speaker of that summoned in 1593 received for answer to his request of liberty of speech, that it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter; their privilege was ay or no. Wherefore, Mr. Speaker," continues the lord-keeper Pickering, "her majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the church and transforming the commonwealth, and do exhibit such bills to such purpose, that you receive them not, until they be viewed and considered by those who it is fitter should consider of such things, and can better judge of them." It seems not improbable, that this admonition, which indeed is in no unusual style for this reign, was suggested by the expectation of some unpleasing debate. For we read that the very first day of the session, though the commons had adjourned on account of the speaker's illness, the unconquerable Peter Wentworth, with another member, presented a petition to the lord-keeper, desiring "the lords of the upper house to join with them of the lower in imploring her majesty to entail the succession of the crown, for which they had already prepared a bill." This step, which may seem to us rather arrogant and unparliamentary, drew down, as they must have expected, the queen's indignation. They were summoned before the council, and committed to different prisons. A few days afterward a bill for reforming the abuses of ecclesiastical courts was presented by Morice, attorney of the court of wards, and underwent some discussion in the house. But the queen sent for the speaker, and expressly commanded that no bill touching matters of state or reformation of causes ecclesiastical should be exhibited; and if any such should be offered, enjoining him on his allegiance not to read it. It was the custom at that time for the speaker to read and expound to the house all the bills that any member offered. Morice himself was committed to safe custody, from which he wrote a spirited letter to lord Burleigh, expressing his sorrow for having offended the queen, but at the same time his resolution "to strive," he says, "while his life should last, for freedom of conscience,

public justice, and the liberties of his country." Some days after, a motion was made that, as some places might complain of paying subsidies, their representatives not having been consulted nor been present when they were granted, the house should address the queen to set their members at liberty. But the ministers opposed this, as likely to hurt those whose good was sought, her majesty being more likely to release them if left to her own gracious disposition. It does not appear however that she did so during the session, which lasted above a month.

§ 15. The admonitions not to abuse freedom of speech, which had become almost as much matter of course as the request for it, were repeated in the ensuing parliaments of 1597 and 1601. Nothing more remarkable occurs in the former of these sessions than an address to the queen against the enormous abuse of monopolies. The crown either possessed or assumed the prerogative of regulating almost all matters of commerce at its discretion. Patents to deal exclusively in particular articles, generally of foreign growth, but reaching in some instances to such important necessaries of life as salt, leather, and coal, had been lavishly granted to the courtiers, with little direct advantage to the revenue. They sold them to companies of merchants, who of course enhanced the price to the utmost ability of the purchaser. This business seems to have been purposely protracted by the ministers and the speaker, who, in this reign, was usually in the court's interests, till the last day of the session; when, in answer to his mention of it, the lord-keeper said that the queen "hoped her dutiful and loving subjects would not take away her prerogative, which is the choicest flower in her garden, and the principal and head pearl in her crown and diadem; but would rather leave that to her disposition, promising to examine all patents, and to abide the touchstone of the law." This answer, though less stern than had been usual, was merely evasive: and in the session of 1601 a bolder and more successful attack was made on the administration than this reign had witnessed. The grievance of monopolies had gone on continually increasing; scarce any article was exempt from these oppressive patents. When the list of them was read over in the house, a member exclaimed, "Is not bread among the number?" The house seemed amazed: "Nay," said he, "if no remedy is found for these, bread will be there before the next parliament. Every tongue seemed now unloosed: each as if emulously descanting on the injuries of the place he represented. It was vain for the court-

iers to withstand this torrent. Raleigh, no small gainer himself by some monopolies, after making what excuse he could, offered to give them up. Robert Cecil the secretary, and Bacon, talked loudly of the prerogative, and endeavored at least to persuade the house that it would be fitter to proceed by petition to the queen than by a bill. But it was properly answered that nothing had been gained by petitioning in the last parliament. After four days of eager debate, and more heat than had ever been witnessed, this ferment was suddenly appeased by one of those well-timed concessions by which skillful princes spare themselves the mortification of being overcome. Elizabeth sent down a message that she would revoke all grants that should be found injurious by fair trial at law; and Cecil rendered the somewhat ambiguous generality of this expression more satisfactory by an assurance that the existing patents should all be repealed, and no more be granted. This victory filled the commons with joy, perhaps the more from being rather unexpected. They addressed the queen with rapturous and hyperbolical acknowledgments, to which she answered in an affectionate strain, glancing only with an oblique irony at some of those movers in the debate, whom in her earlier and more vigorous years she would have keenly reprimanded. She repeated this a little more plainly at the close of the session, but still with commendation of the body of the commons. So altered a tone must be ascribed partly to the growing spirit she perceived in her subjects, but partly also to those cares which clouded with listless melancholy the last scenes of her illustrious life.

The discontent that vented itself against monopolies was not a little excited by the increasing demands which Elizabeth was compelled to make upon the commons in all her latter parliaments. Though it was declared, in the preamble to the subsidy bill of 1593, that "these large and unusual grants, made to a most excellent princess on a most pressing and extraordinary occasion, should not at any time hereafter be drawn into a precedent," yet an equal sum was obtained in 1597, and one still greater in 1601, but money was always reluctantly given, and the queen's early frugality had accustomed her subjects to very low taxes; so that the debates on the supply in 1601, as handed down to us by Townsend, exhibit a lurking ill-humor which would find a better occasion to break forth.

§ 16. The house of commons, upon a review of Elizabeth's reign, was very far, on the one hand, from exercising those

constitutional rights which have long since belonged to it, or even those which by ancient precedent it might have claimed as its own; yet, on the other hand, was not quite so servile and submissive an assembly as an artful historian has represented it. If many of its members were but creatures of power, if the majority was often too readily intimidated, if the bold and honest, but not very judicious, Wentworths were but feebly supported, when their impatience hurried them beyond their colleagues, there was still a considerable party, sometimes carrying the house along with them, who with patient resolution and inflexible aim recurred in every session to the assertion of that one great privilege which their sovereign contested, the right of parliament to inquire into and suggest a remedy for every public mischief or danger. It may be remarked that the ministers, such as Knollys, Hatton, and Robert Cecil, not only sat among the commons, but took a very leading part in their discussions: a proof that the influence of argument could no more be dispensed with than that of power. This, as I conceive, will never be the case in any kingdom where the assembly of the estates is quite subservient to the crown. Nor should we put out of consideration the manner in which the commons were composed. Sixty-two members were added at different times by Elizabeth to the representation, as well from places which had in earlier times discontinued their franchise, as from those to which it was first granted; a very large proportion of them petty boroughs, evidently under the influence of the crown or peerage. This had been the policy of her brother and sister, in order to counterbalance the country gentlemen, and find room for those dependents who had no natural interest to return them to parliament. The ministry took much pains with elections, of which many proofs remain. The house accordingly was filled with placemen, civilians, and common lawyers grasping at preferment. The slavish tone of these persons, as we collect from the minutes of D'Ewes, is strikingly contrasted with the manliness of independent gentlemen. And as the house was by no means very fully attended, the divisions, a few of which are recorded, running from 200 to 250 in the aggregate, it may be perceived that the court, whose followers were at hand, would maintain a formidable influence. But this influence, however pernicious to the integrity of parliament, is distinguishable from that exertion of almost absolute prerogative which Hume has assumed as the sole spring of Elizabeth's government, and would never be employed till some deficiency of strength was experienced in the other.

§ 17. D'Ewes has preserved a somewhat remarkable debate on a bill presented in the session of 1571, in order to render valid elections of non-resident burgesses. According to the tenor of the king's writ, confirmed by an act passed under Henry V., every city and borough was required to elect none but members of their own community. To this provision, as a seat in the commons' house grew more an object of general ambition, while many boroughs fell into comparative decay, less and less attention had been paid; till, the greater part of the borough representatives having become strangers, it was deemed by some expedient to repeal the ancient statute, and give a sanction to the innovation that time had wrought; while others contended in favor of the original usage, and seemed anxious to restore its vigor. It was alleged that persons able and fit for so great an employment ought to be preferred without regard to their inhabitancy; since a man could not be presumed to be the wiser for being a resident burgess; and that the whole body of the realm, and the service of the same, was rather to be respected than any private regard of place or person. This is a remarkable, and perhaps the earliest assertion, of an important constitutional principle, that each member of the house of commons is deputed to serve, not only for his constituents, but for the whole kingdom; a principle which marks the distinction between a modern English parliament and such deputations of the estates as were assembled in several continental kingdoms; a principle to which the house of commons is indebted for its weight and dignity, as well as its beneficial efficiency, and which none but the servile worshipers of the populace are ever found to gainsay. It is obvious that such a principle could never obtain currency, or even be advanced on any plausible ground, until the law for the election of resident burgesses had gone into disuse. The bill was committed by a majority; but, as no further entry appears in the journals, we may infer it to have dropped.

It may be mentioned, as not unconnected with this subject, that in the same session a fine was imposed on the borough of Westbury for receiving a bribe of four pounds from Thomas Long, "being a very simple man and of small capacity to serve in that place;" and the mayor was ordered to repay the money. Long, however, does not seem to have been expelled. This is the earliest precedent on record for the punishment of bribery in elections.

§ 18. We shall find an additional proof that the house of

commons under the Tudor princes, and especially Elizabeth, was not so feeble and insignificant an assembly as has been often insinuated, if we look at their frequent assertion and gradual acquisition of those peculiar authorities and immunities which constitute what is called privilege of parliament. Of these, the first, in order of time if not of importance, was their exemption from arrest on civil process during their session. Several instances occurred under the Plantagenet dynasty where this privilege was claimed and admitted; but generally by means of a distinct act of parliament, or at least by a writ of privilege out of chancery. The house of commons for the first time took upon themselves to avenge their own injury in 1543, when the remarkable case of George Ferrers occurred. This is related in detail by Hollingshed, and is perhaps the only piece of constitutional information we owe to him. Without repeating all the circumstances, it will be sufficient here to mention that the commons sent their sergeant with his mace to demand the release of Ferrers, a burgess who had been arrested on his way to the house; that the jailers and sheriffs of London having not only refused compliance, but ill-treated the sergeant, they compelled them, as well as the sheriffs of London, and even the plaintiff who had sued the writ against Ferrers, to appear at the bar of the house, and committed them to prison; and that the king, in the presence of the judges, confirmed in the strongest manner this assertion of privilege by the commons. It was, however, so far at least as our knowledge extends, a very important novelty in constitutional practice; not a trace occurring in any former instance on record, either of a party being delivered from arrest at the mere demand of the sergeant, or of any one being committed to prison by the sole authority of the house of commons. Such important powers were not likely to be thrown away, though their exertion might not always be thought expedient. The commons had sometimes recourse to a writ of privilege in order to release their members under arrest, and did not repeat the proceeding in Ferrer's case till that of Smalley, a member's servant in 1575, whom they sent their sergeant to deliver. It is to be observed that the privilege of immunity extended to the menial servants of members, till taken away by the statute of George III. Several persons however were, at different times, under Mary and Elizabeth, committed by the house to the Tower, or to the custody of their own sergeant, for assaults on their members. Smalley himself, above mentioned, it having been discovered that he had fraudulently procured

this arrest, in order to get rid of the debt, was committed for a month, and ordered to pay the plaintiff one hundred pounds, which was possibly the amount of what he owed. One also, who had served a subpœna out of the star-chamber on a member in the session of 1584, was not only put in confinement, but obliged to pay the party's expenses before they would discharge him, making his humble submission on his knees. This is the more remarkable, inasmuch as the chancellor had but just before made answer to a committee deputed "to signify to him how, by the ancient liberties of the house, the members thereof are privileged from being served with subpœnas," that "he thought the house had no such privilege, nor would he allow any precedents for it, unless they had also been ratified in the court of chancery." They continued to enforce this summary mode of redress with no objection, so far as appears by any other authority, till, before the end of the queen's reign, it had become their established law of privilege "that no subpœna or summons for the attendance of a member in any other court ought to be served, without leave obtained or information given to the house; and that the persons who procured or served such process were guilty of a breach of privilege, and were punishable by commitment or otherwise, by the order of the house." The great importance of such a privilege was the security it furnished, when fully claimed and acted upon, against those irregular detentions and examinations by the council, and which, in despite of the promised liberty of speech, had, as we have seen, oppressed some of their most distinguished members. But it must be owned that, by thus suspending all civil and private suits against themselves, the commons gave too much encouragement to needy and worthless men who sought their walls as a place of sanctuary.

This power of punishment, as it were for contempt, assumed in respect of those who molested members of the commons by legal process, was still more naturally applicable to offenses against established order committed by any of themselves. In the earliest record that is extant of their daily proceedings, the "Commons' Journal" of the first parliament of Edward VI., we find, on the 21st January, 1547–'8, a short entry of an order that John Storie, one of the burgesses, shall be committed to the custody of the sergeant. The order is repeated the next day; on the next, articles of accusation are read against Storie. It is ordered on the following day that he shall be committed prisoner to the Tower. His wife soon after presents a petition, which is ordered to be deliv-

ered to the protector. On the 20th of February letters from Storie in the Tower are read. These probably were not deemed satisfactory, for it is not till the 2d of March that we have an entry of a letter from Mr. Storie in the Tower with his submission. And an order immediately follows, that "the king's privy council in the nether house shall humbly declare unto the lord protector's grace that the resolution of the house is, that Mr. Storie be enlarged, and at liberty, out of prison; and to require the king's majesty to forgive him his offenses in this case toward his majesty and his council."

Storie was a zealous enemy of the Reformation, and suffered death for treason under Elizabeth. His temper appears to have been ungovernable; even in Mary's reign he fell a second time under the censure of the house for disrespect to the speaker. It is highly probable that his offense in the present instance was some ebullition of virulence against the changes in religion; for the first entry concerning him immediately follows the third reading of the bill that established the English liturgy. It is also manifest that he had to atone for language disrespectful to the protector's government, as well as to the house. But it is worthy of notice that the commons by their single authority commit their burgess first to their own officer, and next to the Tower; and that upon his submission they inform the protector of their resolution to discharge him out of custody, recommending him to forgiveness as to his offense against the council, which, as they must have been aware, the privilege of parliament as to words spoken within its walls (if we are right in supposing such to have been the case) would extend to cover. The right of the house, indeed, to punish its own members for indecent abuse of the liberty of speech may be thought to result naturally from the king's concession of that liberty; and its right to preserve order in debate is plainly incident to that of debating at all.

A more remarkable assertion of the house's right to inflict punishment on its own members occurred in 1581, and, being much better known than those I have mentioned, has been sometimes treated as the earliest precedent. One Arthur Hall, a burgess for Grantham, was charged with having caused to be published a book against the present parliament, on account of certain proceedings in the last session, wherein he was privately interested, "not only reproaching some particular good members of the house, but also very much slanderous and derogatory to its general authority, power, and state, and prejudicial to the validity of its pro-

ceedings in making and establishing of laws." Hall was the master of Smalley, whose case has been mentioned above, and had so much incurred the displeasure of the house by his supposed privity to the fraud of his servant, that a bill was brought in and read a first time, the precise nature of which does not appear, but expressed to be against him and two of his servants. It seems probable, from these and some other passages in the entries that occur on this subject in the journal, that Hall in his libel had depreciated the house of commons as an estate of parliament, and especially in respect of its privileges, pretty much in the strain which the advocates of prerogative came afterward to employ. Whatever share, therefore, personal resentment may have had in exasperating the house, they had a public quarrel to avenge against one of their members, who was led by pique to betray their ancient liberties. The vengeance of popular assemblies is not easily satisfied. Though Hall made a pretty humble submission, they went on, by a unanimous vote, to heap every punishment in their power upon his head. They expelled him, they imposed a fine of five hundred marks upon him, they sent him to the Tower until he should make a satisfactory retraction. At the end of the session he had not been released; nor was it the design of the commons that his imprisonment should then terminate; but their own dissolution, which ensued, put an end to the business. Hall sat in some later parliaments. This is the leading precedent, as far as records show, for the power of expulsion, which the commons have ever retained without dispute of those who would most curtail their privileges. They exercised it with no small violence in the session of 1585 against the famous Dr. Parry, who, having spoken warmly against the bill inflicting the penalty of death on jesuits and seminary priests, as being cruel and bloody, the commons not only ordered him into the custody of the sergeant, for opposing a bill approved of by a committee, and directed the speaker to reprimand him upon his knees, but, on his failing to make a sufficient apology, voted him no longer a burgess of that house.

§ 19. The commons asserted in this reign, perhaps for the first time, another and most important privilege, the right of determining all matters relative to their own elections. Difficulties of this nature had in former times been decided in chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred it is impossible to pronounce, on account of the unsatisfactory state of the rolls and jour-

nals of parliament under Edward IV., Henry VII., and Henry VIII. One remarkable entry, however, may be found in the reign of Mary, when a committee is appointed "to inquire if Alexander Nowell, prebendary of Westminster, may be of the house;" and it is declared next day by them that "Alexander Nowell, being prebendary in Westminster, and thereby having voice in the convocation house, can not be a member of this house; and so agreed by the house, and the queen's writ to be directed for another burgess in his place." Nothing further appears on record till in 1586 the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was, that the chancellor had issued a second writ for this county, on the ground of some irregularity in the first return, and a different person had been elected. Some notice having been taken of this matter in the commons, the speaker received orders to signify to them her majesty's displeasure that "the house had been troubled with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the returns for the county of Norfolk, and to act therein according to justice and right." The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns; who reported the whole case, with their opinion that those elected on the first writ should take their seats, declaring further that they understood the chancellor and some of the judges to be of the same opinion; but that

"They had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were members thereof. And though they thought very reverently of the said lord chancellor and judges, and knew them to be competent judges in their places; yet in this case they took them not for judges in parliament in this house: and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of this house, and not as allowed of by the said lord chancellor and judges. Which was agreed unto by the whole house."

This judicial control over their elections was not lost. A committee was appointed, in the session of 1589, to examine into sundry abuses of returns, among which is enumerated that some are returned for new places. And several instances of the house's deciding on elections occur in subsequent parliaments.

This tenaciousness of their own dignity and privileges was

shown in some disagreements with the upper house. The lords sent them a message in the session of 1593, reminding them of the queen's want of a supply, and requesting that a committee of conference might be appointed. This was accordingly done, and Sir Robert Cecil reported from it that the lords would consent to nothing less than a grant of three entire subsidies, the commons having shown a reluctance to give more than two. But Mr. Francis Bacon said "He yielded to the subsidy, but disliked that this house should join with the upper house in granting it. For the custom and privilege of this house hath always been, first to make offer of the subsidies from hence, then to the upper house; except it were that they present a bill unto this house, with desire of our assent thereto, and then to send it up again." But the house were now so much awakened to the privilege of originating money-bills, that, in spite of all the exertions of the court, the proposition for another conference with the lords was lost on a division by 217 to 128. It was by this opposition to the ministry in this session that Bacon, who acted perhaps full as much from pique toward the Cecils, and ambitious attachment to Essex, as from any real patriotism, so deeply offended the queen, that, with all his subsequent pliancy, he never fully reinstated himself in her favor.

§ 20. That the government of England was a monarchy bounded by law, far unlike the actual state of the principal kingdoms on the continent, appears to have been so obvious and fundamental a truth, that flattery itself did not venture directly to contravene it. Hume has laid hold of a passage in Raleigh's preface to his "History of the World" (written indeed a few years later than the age of Elizabeth), as if it fairly represented public opinion as to our form of government. Raleigh says that Philip II. "attempted to make himself not only an absolute monarch over the Netherlands, like unto the kings and sovereigns of England and France; but, Turk-like, to tread under his feet all their national and fundamental laws, privileges, and ancient rights." But who, that was really desirous of establishing the truth, would have brought Raleigh into court as an unexceptionable witness on such a question? Unscrupulous ambition taught men in that age, who sought to win or regain the crown's favor, to falsify all law and fact in behalf of prerogative, as unblushingly as our modern demagogues exaggerate and distort the liberties of the people. The sentence itself, if designed to carry the full meaning that Hume assigns to it, is little better than an absurdity. For why were the rights and privi-

leges of the Netherlands more fundamental that those of England? and by what logic could it be proved more Turk-like to impose the tax of the twentieth penny, or to bring Spanish troops into those provinces, in contravention of their ancient charters, than to transgress the Great Charter of this kingdom, with all those unrescinded statutes and those traditional unwritten liberties which were the ancient inheritance of its subjects? Or could any one, conversant in the slightest degree with the two countries, range in the same class of absolute sovereigns the kings of France and England? The arbitrary acts of our Tudor princes, even of Henry VIII., were trifling in comparison of the despotism of Francis I. and Henry II., who forced their most tyrannical ordinances down the throats of the parliament of Paris with all the violence of military usurpers. No permanent law had ever been attempted in England, nor any internal tax imposed, without consent of the people's representatives. No law in France had ever received such consent; nor had the taxes, enormously burdensome as they were in Raleigh's time, been imposed, for one hundred and fifty years past, by any higher authority than a royal ordinance. But did the English ever recognize, even by implication, the strange parallels which Raleigh has made for their government with that of France, and Hume with that of Turkey? The language adopted in addressing Elizabeth was always remarkably submissive. Hypocritical adulation was so much among the vices of that age, that the want of it passed for rudeness. Yet Onslow, speaker of the parliament of 1566, being then solicitor-general, in addressing the queen, says, "By our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such as the prince can take money or other things, or do as he will at his own pleasure without order, but quietly to suffer his subjects to enjoy their own, without wrongful oppression; wherein other princes by their liberty do take as pleaseth them."

§ 21. There was unfortunately a notion very prevalent in the cabinet of Elizabeth, though it was not quite so broadly or at least so frequently promulgated as in the following reigns, that, besides the common prerogatives of the English crown, which were admitted to have legal bounds, there was a kind of paramount sovereignty, which they denominated her absolute power, incident, as they pretended, to the abstract nature of sovereignty, and arising out of its primary office of preserving the state from destruction. This seemed

analogous to the dictatorial power which might be said to reside in the Roman senate, since it could confer it upon an individual. And we all must, in fact, admit that self-preservation is the first necessity of commonwealths as well as persons, which may justify, in Montesquieu's poetical language, the veiling of the statues of liberty. Thus martial law is proclaimed during an invasion, and houses are destroyed in expectation of a siege. But few governments are to be trusted with this insidious plea of necessity, which more often means their own security than that of the people. Nor do I conceive that the ministers of Elizabeth restrained this pretended absolute power, even in theory, to such cases of overbearing exigency. It was the misfortune of the sixteenth century to see kingly power strained to the highest pitch in the two principal European monarchies. Charles V. and Philip II. had crushed and trampled the ancient liberties of Castile and Aragon. Francis I. and his successors, who found the work nearly done to their hands, had inflicted every practical oppression upon their subjects. These examples could not be without their effect on a government so unceasingly attentive to all that passed on the stage of Europe. Nor was this effect confined to the court of Elizabeth. A king of England, in the presence of absolute sovereigns, or perhaps of their ambassadors, must always feel some degree of that humiliation with which a young man, in check of a prudent father, regards the careless prodigality of the rich heirs with whom he associates. Good sense and elevated views of duty may subdue the emotion; but he must be above human nature who is insensible to the contrast.

There must be few of my readers who are unacquainted with the animated sketch that Hume has delineated of the English constitution under Elizabeth. It has been partly the object of the present chapter to correct his exaggerated outline; and nothing would be more easy than to point at other mistakes into which he has fallen through prejudice, through carelessness, or through want of acquaintance with law. His capital and inexcusable fault in every thing he has written on our constitution is to have sought for evidence upon one side only of the question. Thus the remonstrance of the judges against arbitrary imprisonment by the council is infinitely more conclusive to prove that the right of personal liberty existed than the fact of its infringement can be to prove that it did not. There is something fallacious in the negative argument which he perpetually uses, that, because we find no mention of any umbrage being taken at certain

strains of prerogative, they must have been perfectly consonant to law. For if nothing of this could be traced, which is not so often the case as he represents it, we should remember that, even when a constant watchfulness is exercised by means of political parties and a free press, a nation is seldom alive to the transgressions of a prudent and successful government. The character which on a former occasion I have given of the English constitution under the house of Plantagenet may still be applied to it under the line of Tudor, that it was a monarchy greatly limited by law, but retaining much power that was ill-calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. It may be added that the practical exercise of authority seems to have been less frequently violent and oppressive, and its legal limitations better understood, in the reign of Elizabeth than for some preceding ages; and that sufficient indications had become distinguishable before its close, from which it might be gathered that the seventeenth century had arisen upon a race of men in whom the spirit of those who stood against John and Edward was rekindled with a less partial and a steadier warmth.

NOTE TO CHAPTER V.

REMONSTRANCE OF JUDGES AGAINST ILLEGAL COMMITMENTS (p. 136).

"To the Rt: hon: our very good lords Sir Chr. Hatton, of the honorable order of the garter knight, and chancellor of England, and Sir W. Cecill of the hon: order of the garter knight, Lord Burleigh, lord high treasurer of England,—We her majesty's justices, of both benches, and barons of the exchequer, do desire your lordships that by your good means such order may be taken that her highness's subjects may not be committed or detained in prison, by commandment of any nobleman or councilor, against the laws of the realm, to the grievous charges and oppression of her majesty's said subjects: Or else help us to have access to her majesty, to be suitors unto her highness for the same; for divers have been imprisoned for suing ordinary actions, and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.

"Item: Others have been committed and detained in prison upon such commandment against the law; and upon the queen's writ in that behalf, no cause sufficient hath been certified or returned.

"Item: Some of the parties so committed and detained in prison after they have, by the queen's writ, been lawfully discharged in court, have been eftsoones recommitted to prison in secret places, and not in common and ordinary known prisons, as the Marshalsea, Fleet, King's Bench, Gatehouse, nor the custodie of any sheriff, so as, upon complaint made for their delivery, the queen's court can not learn to whom to award her majesty's writ, without which justice can not be done.

"Item: Divers sergeants of London and officers have been many times committed to prison for lawful execution of her majesty's writs out of the King's Bench, Common Pleas, and other courts, to their great charges and oppression, whereby they are put in such fear as they dare not execute the queen's process.

"Item: Divers have been sent for by

pursuivants for private causes, some of them dwelling far distant from London, and compelled to pay to the pursuivants great sums of money against the law, and have been committed to prison till they would release the lawful benefit of their suits, judgments, or executions for remedie, in which behalf we are almost daily called upon to minister justice according to law, whereunto we are bound by our office and oath.

"And whereas it pleased your lordships to will divers of us to set down when a prisoner sent to custody by her majesty, her council, or some one or two of them, is to be detained in prison, and not to be delivered by her majesty's courts or judges:

"We think that, if any person shall be committed by her majesty's special commandment, or by order from the council-board, or for treason touching her majesty's person [a word of five letters follows, illegible to me], which causes being generally returned into any court, is good cause for the same court to leave the person committed in custody.

"But if any person shall be committed for any other cause, then the same ought specially to be returned."

This paper bears the original signatures of eleven judges. It has no date, but is indorsed 5 June, 1591. In the printed report it is said to have been delivered in Easter term 34 Eliz., that is, in 1592. The chancellor Hatton, whose name is mentioned, died in November, 1591; so that, if there is no mistake, this must have been delivered a second time, after undergoing the revision of the judges. And in fact the differences are far too material to have proceeded from accidental carelessness in transcription. The latter copy is fuller, and on the whole more perspicuous, than the manuscript I have followed; but in one or two places it will be better understood by comparison with it.

CHAPTER VI.

ON THE ENGLISH CONSTITUTION UNDER JAMES I.

§ 1. Quiet Accession of James. § 2. Question of his Title to the Crown. Legitimacy of the Earl of Hertford's Issue. § 3. Early unpopularity of the King. Conduct toward the Puritans. § 4. Parliament convoked by an irregular Proclamation. Question of Fortescue and Goodwin's Election. § 5. Shirley's case of Privilege. § 6. Complaints of Grievances. § 7. Commons' Vindication of themselves. § 8. Sessions of 1605, 1606. Union with Scotland debated. Continual Bickerings between the Crown and Commons. § 9. Impositions on Merchandise without consent of Parliament. § 10. Remonstrances against these in Session of 1610. § 11. Doctrine of King's absolute Power inculcated by Clergy. Articuli Cleri. § 12. Renewed Complaints of the Commons. Negotiation for giving up the Feudal Revenue. Dissolution of Parliament. § 13. Character of James. § 14. Death of Lord Salisbury. Foreign Politics of the Government. § 15. Lord Coke's Alienation from the Court. Illegal Proclamations. § 16. Means resorted to in order to avoid the Meeting of Parliament. § 17. Parliament of 1614. Undertakers. It is dissolved without passing a single Act. § 18. Benevolences. Prosecution of Peacham. § 19. Dispute about the Jurisdiction of the Court of Chancery. § 20. Case of Commendams. § 21. Arbitrary Proceedings in Star-Chamber. § 22. Arabella Stuart. § 23. Somerset and Overbury. § 24. Sir Walter Raleigh. § 25. Parliament of 1621. Proceedings against Mompesson and Lord Bacon. § 26. Violence in the Case of Floyd. § 27. War in the Palatinate. § 28. Disagreement between the King and Commons. Their Dissolution after a strong Remonstrance. § 29. Marriage Treaty with Spain. § 30. Parliament of 1624. § 31. Impeachment of Middlesex. § 32. Result of the Struggle between James and the Parliament.

§ 1. It might afford an illustration of the fallaciousness of political speculations to contrast the hopes and inquietudes that agitated the minds of men concerning the inheritance of the crown during Elizabeth's lifetime, while not less than fourteen titles were idly or mischievously reckoned up, with the perfect tranquillity which accompanied the accession of her successor. The house of Suffolk, whose claim was legally indisputable, if we admit the testament of Henry VIII. to have been duly executed, appear, though no public inquiry had been made into that fact, to have lost ground in popular opinion, partly through an unequal marriage of lord Beauchamp with a private gentleman's daughter, but still more from a natural disposition to favor the hereditary line rather than the capricious disposition of a sovereign long since dead, as soon as it became consistent with the preservation of the reformed faith. Leicester once hoped, it is said, to place his brother-in-law, the earl of Huntingdon, descended from the duke of Clarence, upon the throne; but this pretension had been entirely forgotten. The more intriguing and violent of the catholic party, after the death of Mary, entertaining little

hope that the king of Scots would abandon the principle of his education, sought to gain support to a pretended title in the king of Spain, or his daughter the infanta, who afterward married the archduke Albert, governor of the Netherlands. Others, abhorring so odious a claim, looked to Arabella Stuart, daughter of the earl of Lennox, younger brother of James's father, and equally descended from the stock of Henry VII., sustaining her manifest defect of primogeniture by her birth within the realm, according to the principle of law that excluded aliens from inheritance. But this principle was justly deemed inapplicable to the crown. Clement VIII., who had no other view than to secure the re-establishment of the catholic faith in England, and had the judgment to perceive that the ascendency of Spain would neither be endured by the nation nor permitted by the French king, favored this claim of Arabella, who, though apparently of the reformed religion, was rather suspected at home of wavering in her faith, and entertained a hope of marrying her to the cardinal Farnese, brother of the duke of Parma. Considerations of public interest, however, unequivocally pleaded for the Scottish line; the extinction of long sanguinary feuds, and the consolidation of the British empire. Elizabeth herself, though by no means on terms of sincere friendship with James, and harassing him by intrigues with his subjects to the close of her life, seems to have always designed that he should inherit her crown. And the general expectation of what was to follow, as well from conviction of his right as from the impracticability of any effectual competition, had so thoroughly paved the way that the council's proclamation of the king of Scots excited no more commotion than that of an heir-apparent.

§ 2. The popular voice in favor of James was undoubtedly raised in consequence of a natural opinion that he was the lawful heir to the throne. But this was only according to vulgar notions of right which respect hereditary succession as something indefeasible. In point of fact, it is at least very doubtful whether James I. were a legitimate sovereign, according to the sense which that word ought properly to bear. The house of Stuart no more came in by a clear title than the house of Brunswick; by such a title, I mean, as the statute laws of this kingdom had recognized. No private man could have recovered an acre of land without proving a better right than they could make out to the crown of England. What, then, had James to rest upon? What renders it absurd to call him and his children usurpers? He

had that which the flatterers of his family most effected to disdain—the will of the people; not certainly expressed in regular suffrage or declared election, but unanimously and voluntarily ratifying that which in itself could surely give no right, the determination of the late queen's council to proclaim his accession to the throne.

It is probable that what has been just said may appear rather paradoxical to those who have not considered this part of our history, yet it is capable of satisfactory proof. This proof consists of four propositions: 1. That a lawful king of England, with the advice and consent of parliament, may make statutes to limit the inheritance of the crown, as shall seem fit; 2. That a statute passed in the 35th year of king Henry VIII. enabled that prince to dispose of the succession by his last will signed with his own hand; 3. That Henry executed such a will, by which, in default of issue from his children, the crown was entailed upon the descendants of his younger sister, Mary duchess of Suffolk, before those of Margaret queen of Scots; 4. That such descendants of Mary were living at the decease of Elizabeth.

Of these propositions the two former can require no support; the first being one that it would be perilous to deny, and the second asserting a notorious fact. A question has, however, been raised with respect to the third proposition; for though the will of Henry, now in the chapter-house at Westminster, is certainly authentic, and is attested by many witnesses, it has been doubted whether the signature was made with his own hand, as required by the act of parliament. In the reign of Elizabeth it was asserted by the queen of Scots' ministers that, the king being at the last extremity, some one had put a stamp for him to the instrument. It is true that he was in the latter part of his life accustomed to employ a stamp instead of making his signature. Many impressions of this are extant; but it is evident on the first inspection not only that the presumed autographs in the will (for there are two) are not like these impressions, but that they are not the impressions of any stamp, the marks of the pen being very clearly discernible. It is more difficult to pronounce that they may not be feigned, but such is not the opinion of some who are best acquainted with Henry's handwriting; and what is still more to the purpose, there is no pretense for setting up such a possibility, when the story of the stamp, as to which the partisans of Mary pretended to adduce evidence, appears so clearly to be a fabrication. We have, therefore, every reasonable ground to maintain that

Henry did duly execute a will postponing the Scots line to that of Suffolk.

The fourth proposition is in itself undeniable. There were descendants of Mary duchess of Suffolk, by her two daughters, Frances, second duchess of Suffolk, and Eleanor countess of Cumberland. A story had, indeed, been circulated that Charles Brandon, duke of Suffolk, was already married to a lady of the name of Mortimer at the time of his union with the king's sister. But this circumstance seems to be sufficiently explained in the treatise of Hales. It is somewhat more questionable from which of his two daughters we are to derive the hereditary stock. This depends on the legitimacy of lord Beauchamp, son of the earl of Hertford by Catherine Grey. I have mentioned in another place the process before a commission appointed by Elizabeth, which ended in declaring that their marriage was not proved, and that their cohabitation had been illicit. The parties alleged themselves to have been married clandestinely in the earl of Hertford's house by a minister whom they had never before seen, and of whose name they were ignorant, in the presence only of a sister of the earl then deceased. This entire absence of testimony, and the somewhat improbable nature of the story, at least in appearance, may still, perhaps, leave a shade of doubt as to the reality of the marriage. On the other hand, it was unquestionable that their object must have been a legitimate union; and such a hasty and furtive ceremony as they asserted to have taken place, while it would, if sufficiently proved, be completely valid, was necessary to protect them from the queen's indignation. They were examined separately upon oath to answer a series of the closest interrogatories, which they did with little contradiction, and a perfect agreement in the main; nor was any evidence worth mentioning adduced on the other side; so that unless the rules of the ecclesiastical law are scandalously repugnant to common justice, their oaths entitled them to credit on the merits of the case.

The descent from the younger daughter of Mary Brandon, Eleanor, who married the earl of Cumberland, is subject to no difficulties. She left an only daughter, married to the earl of Derby, from whom the claim devolved again upon females, and seems to have attracted less notice during the reign of Elizabeth than some others much inferior in plausibility. If any should be of opinion that no marriage was regularly contracted between the earl of Hertford and lady Catherine Grey, so as to make their children capable of in-

heritance, the title to the crown, resulting from the statute of 35 H. VIII. and the testament of that prince, will have descended at the death of Elizabeth on the issue of the countess of Cumberland, the youngest daughter of the duchess of Suffolk, lady Frances Keyes, having died without issue. In neither case could the house of Stuart have a lawful claim.

There is much reason to believe that the consciousness of this defect in his parliamentary title put James on magnifying, still more than from his natural temper he was prone to do, the inherent rights of primogenitary succession as something indefeasible by the legislature; a doctrine which, however it might suit the schools of divinity, was in diametrical opposition to our statutes. Through the servile spirit of those times, however, it made a rapid progress; and, interwoven by cunning and bigotry with religion, became a distinguishing tenet of the party who encouraged the Stuarts to subvert the liberties of this kingdom. In James's proclamation on ascending the throne he set forth his hereditary right in pompous and perhaps unconstitutional phrases. It was the first measure of parliament to pass an act of recognition, acknowledging that immediately on the decease of Elizabeth "the imperial crown of the realm of England did, by inherent birthright and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully next and sole heir of the blood royal of this realm." The will of Henry VIII. it was tacitly agreed by all parties to consign to oblivion; and this most wisely, not on the principles which seem rather too much insinuated in this act of recognition, but on such substantial motives of public expediency as it would have shown an equal want of patriotism and of good sense for the descendants of the house of Suffolk to have withstood.

§ 3. The new king's character, notwithstanding the vicinity of Scotland, seems to have been little understood by the English at his accession. But he was not long in undeceiving them, if it be true that his popularity had vanished away before his arrival in London. The kingdom was full of acute wits and skillful politicians, quick enough to have seen through a less unguarded character than that of James. It was soon manifest that he was unable to wield the sceptre of the great princess whom he ridiculously affected to despise, so as to keep under that rising spirit which might perhaps have grown too strong even for her control. He committed an important error in throwing away the best opportunity that had offered itself for healing the wounds of the

church of England. In his way to London the malcontent clergy presented to him what was commonly called the Millenary Petition, as if signed by 1000 ministers, though the real number was not so great. This petition contained no demand inconsistent with the established hierarchy. James, however, who had not unnaturally taken an extreme disgust at the presbyterian clergy of his native kingdom, by whom his life had been perpetually harassed, showed no disposition to treat these petitioners with favor. The bishops had promised him an obsequiousness to which he had been little accustomed, and a zeal to enhance his prerogative which they afterward too well displayed. His measures toward the nonconformist party had evidently been resolved upon before he summoned a few of their divines to the famous conference at Hampton Court. In the accounts that we read of this meeting we are alternately struck with wonder at the indecent and partial behavior of the king, and at the abject baseness of the bishops, mixed, according to the custom of servile natures, with insolence toward their opponents. It was easy for a monarch and eighteen churchmen to claim the victory, be the merits of their dispute what they might, over four abashed and intimidated adversaries. A very few alterations were made in the church service after this conference, but not of such moment as to reconcile probably a single minister to the established discipline. The king soon afterward put forth a proclamation requiring all ecclesiastical and civil officers to do their duty by enforcing conformity, and admonishing all men not to expect nor attempt any further alteration in the public service. And he had already strictly enjoined the bishops to proceed against all their clergy who did not observe the prescribed order; a command which Bancroft, who about this time followed Whitgift in the primacy, did not wait to have repeated. But the most enormous outrage on the civil rights of these men was the commitment to prison of ten among those who had presented the Millenary Petition; the judges having declared in the star-chamber that it was an offense finable at discretion, and very near to treason and felony, as it tended to sedition and rebellion. By such beginnings did the house of Stuart indicate the course it would steer.

An entire year elapsed, chiefly on account of the unhealthiness of the season in London, before James summoned his first parliament. It might perhaps have been more politic to have chosen some other city; for the length of this interval gave time to form a disadvantageous estimate of his ad-

ministration, and to alienate beyond recovery the puritanical party. Libels were already in circulation reflecting with a sharpness never before known on the king's personal behavior, which presented an extraordinary contrast to that of Elizabeth. James, however, little heeded the popular voice, satisfied with the fulsome and preposterous adulation of his court, and intent on promulgating certain maxims concerning the dignity and power of princes, which he had already announced in his discourse on the "True Law of Free Monarchies," printed some years before in Scotland.

§ 4. In the proclamation for calling together his first parliament, the king, after dilating, as was his favorite practice, on a series of rather common truths in very good language, charges all persons interested in the choice of knights for the shire to select them out of the principal knights or gentlemen within the county; and for the burgesses that choice be made of men of sufficiency and discretion, without desire to please parents and friends that often speak for their children or kindred; avoiding persons noted in religion for their superstitious blindness one way, or for their turbulent humor other ways. We do command, he says, that no bankrupts or outlaws be chosen, but men of known good behavior and sufficient livelihood. The sheriffs are charged not to direct a writ to any ancient town being so ruined that there are not residents sufficient to make such choice, and of whom such lawful election may be made. All returns are to be filed in chancery, and if any be found contrary to this proclamation the same to be rejected as unlawful and insufficient, and the place to be fined for making it; and any one elected contrary to the purport, effect, and true meaning of this proclamation, to be fined and imprisoned.

Such an assumption of control over parliamentary elections was a glaring infringement of those privileges which the house of commons had been steadily and successfully asserting in the late reign. An opportunity very soon occurred of contesting this important point. At the election for the county of Buckingham sir Francis Goodwin had been chosen in preference to Sir John Fortescue, a privy councilor, and the writ returned into chancery. Goodwin having been some years before outlawed, the return was sent back to the sheriff, as contrary to the late proclamation; and, on a second election, sir John Fortescue was chosen. This matter, being brought under the consideration of the house of commons a very few days after the opening of the session, gave rise to their first struggle with the new king. It was resolved, af-

ter hearing the whole case, and arguments by members on both sides, that Goodwin was lawfully elected and returned, and ought to be received. The first notice taken of this was by the lords, who requested that this might be discussed in a conference between the two houses before any other matter should be proceeded in. The commons returned for answer that they conceived it not according to the honor of the house to give account of any of their proceedings. The lords replied, that, having acquainted his majesty with the matter, he desired there might be a conference thereon between the two houses. Upon this message the commons came to a resolution that the speaker with a numerous deputation of members should attend his majesty and report the reasons of their proceedings in Goodwin's case. Two conferences with the king ensued, and the latter at last suggested that both Goodwin and Fortescue should be set aside by issuing a new writ. This compromise was joyfully accepted by the greater part of the commons, after the dispute had lasted nearly three weeks. They have been considered as victorious, upon the whole, in this contest, though they apparently fell short in the result of what they had obtained some years before. But no attempt was ever afterward made to dispute their exclusive jurisdiction.

§ 5. The commons were engaged during this session in the defense of another privilege, to which they annexed perhaps a disproportionate importance. Sir Thomas Shirley, a member, having been taken in execution on a private debt before their meeting, and the warden of the Fleet prison refusing to deliver him up, they were at a loss how to obtain his release. The warden, though committed by the house to a dungeon in the Tower, continued obstinate, conceiving that by releasing his prisoner he should become answerable for the debt. They were evidently reluctant to solicit the king's interference; but, aware at length that their own authority was insufficient, "the vice-chamberlain," according to a memorandum in the journals, "was privately instructed to go to the king and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up Sir Thomas; not as petitioned for by the house, but as if himself thought it fit, out of his own gracious judgment." By this strategem, if we may so term it, they saved the point of honor and recovered their member. The warden's apprehensions, however, of exposing himself to an action for the escape gave rise to a statute which empowers the creditor to sue out a new execution against any one who shall be de-

livered by virtue of his privilege of parliament, after that shall have expired, and discharges from liability those out of whose custody such persons shall be delivered. This is the first legislative recognition of privilege. The most important part of the whole is a proviso subjoined to the act, "That nothing therein contained shall extend to the diminishing of any punishment to be hereafter, by censure in parliament, inflicted upon any person who hereafter shall make or procure to be made any such arrest as is aforesaid." The right of commitment, in such cases at least, by a vote of the house of commons, is here unequivocally maintained.

§ 6. It is not necessary to repeat the complaints of ecclesiastical abuses preferred by this house of commons, as by those that had gone before them. James, by siding openly with the bishops, had given alarm to the reforming party. A code of new canons had recently been established in convocation with the king's assent, obligatory perhaps upon the clergy, but tending to set up an unwarranted authority over the whole nation; imposing oaths and exacting securities in certain cases from the laity, and aiming at the exclusion of non-conformists from all civil rights. Against these canons, as well as various other grievances, the commons remonstrated in a conference with the upper house, but with little immediate effect. They made a more remarkable effort in attacking some public mischiefs of a temporal nature, which, though long the theme of general murmurs, were closely interwoven with the ancient and undisputed prerogatives of the crown. Complaints were uttered, and innovations projected, by the commons of 1604, which Elizabeth would have met with an angry message, and perhaps visited with punishment on the proposers. James, however, was not entirely averse to some of the projected alterations, from which he hoped to derive a pecuniary advantage. The two principal grievances were purveyance and the incidents of military tenure. The former had been restrained by not less than thirty-six statutes, as the commons assert in a petition to the king; in spite of which the impressing of carts and carriages, and the exaction of victuals for the king's use, at prices far below the true value, and in quantity beyond what was necessary, continued to prevail under authority of commissions from the board of green cloth, and was enforced, in case of demur or resistance, by imprisonment under their warrant. The purveyors, indeed, are described as living at free quarters upon the country, felling woods without the owners' consent, and commanding labor with little or no rec-

ompense. Purveyance was a very ancient topic of remonstrance; but both the inadequate revenues of the crown, and a supposed dignity attached to this royal right of spoil, had prevented its abolition from being attempted. But the commons seemed still more to trench on the pride of our feudal monarchy when they proposed to take away guardianship in chivalry; that lucrative tyranny, bequeathed by Norman conquerors, the custody of every military tenant's estate until he should arrive at twenty-one, without accounting for the profits. This, among other grievances, was referred to a committee, in which Bacon took an active share. They obtained a conference on this subject with the lords, who advised to drop the matter for the present, as somewhat unseasonable in the king's first parliament.

In the midst of these testimonies of dissatisfaction with the civil and ecclesiastical administration, the house of commons had not felt much willingness to greet the new sovereign with a subsidy. No demand had been made upon them, far less any proof given of the king's exigencies; and they doubtless knew by experience that an obstinate determination not to yield to any of their wishes would hardly be shaken by a liberal grant of money. They had even passed the usual bill granting tonnage and poundage for life, with certain reservations that gave the court offense, and which apparently they afterward omitted. But there was so little disposition to do any thing further, that the king sent a message to express his desire that the commons would not enter upon the business of a subsidy, and assuring them that he would not take unkindly their omission. By this artifice, which was rather transparent, he avoided the not improbable mortification of seeing the proposal rejected.

§ 7. The king's discontent at the proceedings of this session, which he seems to have rather strongly expressed in some speech to the commons that has not been recorded, gave rise to a very remarkable vindication, prepared by the committee at the house's command, and entitled "A Form of Apology and Satisfaction to be delivered to his Majesty," though such may not be deemed the most appropriate title. It contains a full and pertinent justification of all those proceedings at which James had taken umbrage, and asserts, with respectful boldness and in explicit language, the constitutional rights and liberties of parliament. If the English monarchy had been reckoned as absolute under the Plantagenets and Tudors as Hume has endeavored to make it appear, the commons of 1604 must have made a surprising

advance in their notions of freedom since the king's accession. Adverting to what they call the misinformation openly delivered to his majesty in three things; namely, that their privileges were not of right, but of grace only, renewed every parliament on petition; that they are no court of record, nor yet a court that can command view of records; that the examination of the returns of writs for knights and burgesses is without their compass, and belonging to the chancery: they maintain, on the contrary:

"1. That their privileges and liberties are their right and inheritance, no less than their very lands and goods; 2. That they can not be withheld from them, denied, or impaired, but with apparent wrong to the whole state of the realm; 3. That their making request, at the beginning of a parliament, to enjoy their privilege, is only an act of manners, and does not weaken their right; 4. That their house is a court of record, and has been ever so esteemed; 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of parliament, which with his majesty's royal assent, gives law to other courts, but from other courts receives neither laws nor orders; 6. That the house of commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire."

They vindicate their endeavors to obtain redress of religious and public grievances:

"Your majesty would be misinformed," they tell him, "if any man should deliver that the kings of England have any absolute power in themselves, either to alter religion, which God defend should be in the power of any mortal man whatsoever, or to make any laws concerning the same, otherwise than as in temporal causes, by consent of parliament. We have and shall at all times by our oaths acknowledge that your majesty is sovereign lord and supreme governor in both."

Such was the voice of the English commons in 1604, at the commencement of that great conflict for their liberties which is measured by the line of the house of Stuart. But it is not certain that this apology was ever delivered to the king, though he seems to allude to it in a letter written to one of his ministers about the same time.

§ 8. The next session (1605), which is remarkable on account of the conspiracy of some desperate men to blow up both houses of parliament with gunpowder on the day of their meeting, did not produce much worthy of our notice. A bill to regulate, or probably to suppress, purveyance was thrown out by the lords. The commons sent up another bill to the same effect, which the upper house rejected without discussion, by a rule then perhaps first established, that the same bill could not be proposed twice in one session. They voted

a liberal subsidy, which the king, who had reigned three years without one, had just cause to require. For though he had concluded a peace with Spain soon after his accession, yet the late queen had left a debt of £400,000, and other charges had fallen on the crown. But the bill for this subsidy lay a good while in the house of commons, who came to a vote that it should not pass till their list of grievances was ready to be presented. No notice was taken of these till the next session, beginning in November, 1606, when the king returned an answer to each of the sixteen articles in which matters of grievance were alleged. Of these the greater part refer to certain grants made to particular persons in the nature of monopolies; the king either defending these in his answer, or remitting the parties to the courts of law to try their legality. The principal business of this third session, as it had been of the last, was James's favorite scheme of a perfect union between England and Scotland. It may be collected, though this was never explicitly brought forward, that his views extended to a legislative incorporation. Hume, ever prone to eulogize this monarch at the expense of his people, while he bestows merited praise on his speech in favor of the union, which is upon the whole a well-written and judicious performance, charges the parliament with prejudice, reluctance, and obstinacy. Yet if the commons, while both the theory of our own constitution was so unsettled, and its practice so full of abuse, did not precipitately give in to schemes that might create still further difficulty in all questions between the crown and themselves, we may justly consider it as an additional proof of their wisdom and public spirit. Their slow progress, however, in this favorite measure, which, though they could not refuse to entertain it, they endeavored to defeat by interposing delays and impediments, gave much offense to the king, which he expressed in a speech to the two houses, with the haughtiness, but not the dignity, of Elizabeth. He threatened them to live alternately in the two kingdoms, or to keep his court at York; and alluded, with peculiar acrimony, to certain speeches made in the house, wherein probably his own fame had not been spared.

It is most probable, as experience had shown, that such a demonstration of displeasure from Elizabeth would have insured the repentant submission of the commons. But, within a few years of the most unbroken tranquillity, there had been one of those changes of popular feeling which a government is seldom observant enough to watch. Two springs

had kept in play the machine of her administration—affection and fear; attachment arising from the sense of dangers endured, and glory achieved, for her people, tempered, though not subdued, by the dread of her stern courage and vindictive rigor. For James not a particle of loyal affection lived in the hearts of the nation, while his easy and pusillanimous, though choleric, disposition had gradually diminished those sentiments of apprehension which royal frowns used to excite. The commons, after some angry speeches, resolved to make known to the king, through the speaker, their desire that he would listen to no private reports, but take his information of the house's meaning from themselves; that he would give leave to such persons as he had blamed for their speeches to clear themselves in his hearing; and that he would by some gracious message make known his intention that they should deliver their opinions with full liberty, and without fear. The speaker next day communicated a slight but civil answer he had received from the king, importing his wish to preserve their privileges, especially that of liberty of speech. This, however, did not prevent his sending a message a few days afterward, commenting on their debates, and on some clauses they had introduced into the bill for the abolition of all hostile laws.

The ministry betrayed, in a still more pointed manner, their jealousy of any interference on the part of the commons with the conduct of public affairs in a business of a different nature. The pacification concluded with Spain in 1604, very much against the general wish, had neither removed all grounds of dispute between the governments, nor allayed the dislike of the nations. Spain advanced in that age the most preposterous claims to an exclusive navigation beyond the tropic, and to the sole possession of the American continent; while the English merchants, mindful of the lucrative adventures of the queen's reign, could not be restrained from trespassing on the rich harvest of the Indies by contraband and sometimes piratical voyages. These conflicting interests led of course to mutual complaints of maritime tyranny and fraud; neither likely to be ill-founded, where the one party was as much distinguished for the despotic exercise of vast power, as the other by boldness and cupidity. It was the prevailing bias of the king's temper to keep on friendly terms with Spain, or rather to court her with undisguised and impolitic partiality. But this so much thwarted the prejudices of his subjects, that no part, perhaps, of his administration had such a disadvantageous effect on his popularity. The

merchants presented to the commons, in this session of 1607, a petition upon the grievances they sustained from Spain, entering into such a detail of alleged cruelties as was likely to exasperate that assembly. Nothing, however, was done for a considerable time, when, after receiving the report of a committee on the subject, the house prayed a conference with the lords. They, who acted in this and the preceding session as the mere agents of government, intimated in their reply that they thought it an unusual matter for the commons to enter upon, and took time to consider about a conference. After some delay this was granted, and sir Francis Bacon reported its result to the lower house. The earl of Salisbury managed the conference on the part of the lords. The tenor of his speech, as reported by Bacon, is very remarkable. After discussing the merits of the petition, and considerably extenuating the wrongs imputed to Spain, he adverted to the circumstance of its being presented to the commons. The crown of England was invested, he said, with an absolute power of peace and war; and inferred, from a series of precedents which he vouched, that petitions made in parliament, intermeddling with such matters, had gained little success; that great inconveniences must follow from the public debate of a king's designs, which, if they take wind, must be frustrated; and that, if parliaments have ever been made acquainted with matter of peace or war in a general way, it was either when the king and council conceived that it was material to have some declaration of the zeal and affection of the people, or else when they needed money for the charge of a war, in which case they should be sure enough to hear of it; that the lords would make a good construction of the commons' desire, that it sprang from a forwardness to assist his majesty's future resolutions, rather than a determination to do that wrong to his supreme power which haply might appear to those who were prone to draw evil inferences from their proceedings. Several precedents, indeed, might have been opposed to those of the earl of Salisbury, wherein the commons, especially under Richard II. and Henry VI., had assumed a right of advising on matters of peace and war. But the more recent usage of the constitution did not warrant such an interference. It was, however, rather a bold assertion that they were not the proper channel through which public grievances, or those of so large a portion of the community as the merchants, ought to be represented to the throne.

§ 9. During the interval of two years and a half that elapsed

before the commencement of the next session, a decision had occurred in the court of exchequer which threatened the entire overthrow of our constitution. It had always been deemed the indispensable characteristic of a limited monarchy, however irregular and inconsistent might be the exercise of some prerogatives, that no money could be raised from the subject without the consent of the estates. This essential principle was settled in England, after much contention, by the statute entitled Confirmatio Chartarum, in the 25th year of Edward I. More comprehensive and specific in its expression than the Great Charter of John, it abolishes all "aids, tasks, and prizes, unless by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed;" the king explicitly renouncing the custom he had lately set on wool. Thus the letter of the statute and the history of the times conspire to prove that impositions on merchandise at the ports, to which alone the word prizes was applicable, could no more be levied by the royal prerogative after its enactment, than internal taxes upon landed or movable property, known in that age by the appellations of aids and tallages. But as the former could be assessed with great ease, and with no risk of immediate resistance, and especially as certain ancient customs were preserved by the statute, so that a train of fiscal officers, and a scheme of regulations and restraints upon the export and import of goods became necessary, it was long before the sovereigns of this kingdom could be induced constantly to respect this part of the law. Hence several remonstrances from the commons under Edward III. against the maletolls, or unjust exactions upon wool, by which, if they did not obtain more than a promise of effectual redress, they kept up their claim, and perpetuated the recognition of its justice, for the sake of posterity. They became powerful enough to enforce it under Richard II., in whose time there is little clear evidence of illegal impositions; and from the accession of the house of Lancaster it is undeniable that they ceased altogether. The grant of tonnage and poundage for the king's life, which from the time of Henry V. was made in the first parliament of every reign, might perhaps be considered as a tacit compensation to the crown for its abandonment of these irregular extortions.

Henry VII., the most rapacious, and Henry VIII., the most despotic, of English monarchs, did not presume to violate this acknowledged right. The first who had again recourse to this means of enhancing the revenue was Mary, who, in

the year 1557, set a duty upon cloths exported beyond seas, and afterward another on the importation of French wines. The former of those was probably defended by arguing that there was already a duty on wool; and if cloth, which was wool manufactured, could pass free, there would be a fraud on the revenue. The merchants, however, did not acquiesce in this arbitrary imposition, and, as soon as Elizabeth's accession gave hopes of a restoration of English government, they petitioned to be released from this burden. The administration, however, would not release this duty, which continued to be paid under Elizabeth. She also imposed one upon sweet wines. We read of no complaint in parliament against this novel taxation; but it is alluded to by Bacon in one of his tracts during the queen's reign, as a grievance alleged by her enemies. He defends it, as laid only on a foreign merchandise, and a delicacy which might be forborne.

James had imposed a duty of five shillings per hundredweight on currants, over and above that of two shillings and sixpence, which was granted by the statute of tonnage and poundage. Bates, a Turkey merchant, having refused payment, an information was exhibited against him in the exchequer. Judgment was soon given for the crown. The courts of justice, it is hardly necessary to say, did not consist of men conscientiously impartial between the king and the subject; some corrupt with hope of promotion, many more fearful of removal, or awe-struck by the frowns of power. The speeches of chief baron Fleming, and of baron Clark, the only two that are preserved in Lane's reports, contain propositions still worse than their decision, and wholly subversive of all liberty.

"The king's power," it was said, "is double—ordinary and absolute; and these have several laws and ends. That of the ordinary is for the profit of particular subjects, exercised in ordinary courts, and called common law, which can not be changed in substance without parliament. The king's absolute power is applied to no particular person's benefit, but to the general safety; and this is not directed by the rules of common law, but more properly termed policy and government, varying according to his wisdom for the common good; and all things done within those rules are lawful. The matter in question is matter of state, to be ruled according to policy by the king's extraordinary power. All customs (duties so called) are the effects of foreign commerce; but all affairs of commerce and all treaties with foreign nations belong to the king's absolute power; he therefore who has power over the cause, must have it also over the effect. The sea-ports are the king's gates, which he may open and shut to whom he pleases."

The ancient customs on wine and wool are asserted to have originated in the king's absolute power, and not in a grant of parliament; a point, whether true or not, of no great impor-

tance, if it were acknowledged that many statutes subsequently controlled this prerogative. But these judges impugned the authority of statutes derogatory to their idol. That of 45 E. III., c. 4, that no new imposition should be laid on wool or leather, one of them maintains, did not bind the king's successors; for the right to impose such duties was a principal part of the crown of England, which the king could not diminish. They extolled the king's grace in permitting the matter to be argued, commenting at the same time on the insolence shown in disputing so undeniable a claim. Nor could any judges be more peremptory in resisting an attempt to overthrow the most established precedents than were these barons of king James's exchequer in giving away those fundamental liberties which were the inheritance of every Englishman.

The immediate consequence of this decision was a book of rates, published in July, 1608, under the authority of the great seal, imposing heavy duties upon almost all merchandise. But the judgment of the court of exchequer did not satisfy men jealous of the crown's encroachments. The imposition on currants had been already noticed as a grievance by the house of commons in 1606. But the king answered, that the question was in a course for legal determination; and the commons themselves, which is worthy of remark, do not appear to have entertained any clear persuasion that the impost was contrary to law.

§ 10. In the session, however, which began in February, 1610, they had acquired new light by sifting the legal authorities, and, instead of submitting their opinions to the courts of law, which were in truth little worthy of such deference, were the more provoked to remonstrate against the novel usurpation those servile men had endeavored to prop up. Lawyers, as learned probably as most of the judges, were not wanting in their ranks. The illegality of impositions was shown in two elaborate speeches by Hakewill and Yelverton. And the country gentlemen, who, though less deeply versed in precedents, had too good sense not to discern that the next step would be to levy taxes on their lands, were delighted to find that there had been an old English constitution not yet abrogated, which would bear them out in their opposition. When the king therefore had intimated by a message, and afterward in a speech, his command not to enter on the subject, couched in that arrogant tone of despotism which this absurd prince affected, they presented a strong remonstrance against this inhibition.

"The policy and constitution of this your kingdom (they say) appropriates unto the kings of this realm, with the assent of the parliament, as well the sovereign power of making laws, as that of taxing, or imposing upon the subjects' goods or merchandises, as may not, without their consents, be altered or changed. * * * We, therefore, your majesty's most humble commons assembled in parliament, following the example of this worthy case of our ancestors, and out of a duty of those for whom we serve, finding that your majesty, without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war, have, with all humility, presumed to present this most just and necessary petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away; and that your majesty, in imitation likewise of your noble progenitors, will be pleased that a law be made during this session of parliament, to declare that all impositions set or to be set upon your people, their goods or merchandises, save only by common consent in parliament, are and shall be void."

They proceeded accordingly, after a pretty long time occupied in searching for precedents, to pass a bill taking away impositions; which, as might be anticipated, did not obtain the concurrence of the upper house.

§ 11. The commons had reason for their apprehensions. This doctrine of the king's absolute power beyond the law had become current with all who sought his favor, and especially with the high-church party. The convocation had in 1606 drawn up a set of canons, denouncing as erroneous a number of tenets hostile in their opinion to royal government. These canons, though never authentically published till a later age, could not have been secret. They consist of a series of propositions or paragraphs, to each of which an anathema of the opposite error is attached; deducing the origin of government from the patriarchal regimen of families to the exclusion of any popular choice. Passive obedience in all cases without exception to the established monarch is inculcated.

The real aim of the clergy in thus enormously enhancing the pretensions of the crown was to gain its sanction and support for their own. Schemes of ecclesiastical jurisdiction, hardly less extensive than had warmed the imagination of Becket, now floated before the eyes of his successor Bancroft. He had fallen, indeed, upon evil days, and perfect independence on the temporal magistrate could no longer be attempted; but he acted upon the refined policy of making the royal supremacy over the church, which he was obliged to acknowledge, and professed to exaggerate, the very instrument of its independence upon the law. The favorite object of the bishops in this age was to render their ecclesiastical jurisdiction, no part of which had been curtailed in our

hasty reformation, as unrestrained as possible by the courts of law. These had been wont, down from the reign of Henry II., to grant writs of prohibition whenever the spiritual courts transgressed their proper limits; to the great benefit of the subject, who would otherwise have lost his birthright of the common law, and been exposed to the defective, not to say iniquitous and corrupt, procedure of the ecclesiastical tribunals. But the civilians, supported by the prelates, loudly complained of these prohibitions, which seem to have been much more frequent in the latter years of Elizabeth and the reign of James than in any other period. Bancroft accordingly presented to the star-chamber, in 1605, a series of petitions in the name of the clergy, which lord Coke has denominated *Articuli Cleri*, by analogy to some similar representations of that order under Edward II. In these it was complained that the courts of law interfered by continual prohibitions with a jurisdiction as established and as much derived from the king as their own, either in cases which were clearly within that jurisdiction's limits, or on the slightest suggestion of some matter belonging to the temporal court. It was hinted that the whole course of granting prohibitions was an encroachment of the king's bench and common pleas, and that they could regularly issue only out of chancery. To each of these articles of complaint, extending to twenty-five, the judges made separate answers, in a rough, and some might say, a rude style, but pointed and much to the purpose, vindicating in every instance their right to take cognizance of every collateral matter springing out of an ecclesiastical suit, and repelling the attack upon their power to issue prohibitions as a strange presumption. Nothing was done, nor, thanks to the firmness of the judges, could be done, by the council in this respect. For the clergy had begun by advancing that the king's authority was sufficient to reform what was amiss in any of his own courts, all jurisdiction, spiritual and temporal, being annexed to his crown. But it was positively and repeatedly denied, in reply, that any thing less than act of parliament could alter the course of justice established by law. This effectually silenced the archbishop, who knew how little he had to hope from the commons. By the pretensions made for the church in this affair he exasperated the judges, who had been quite sufficiently disposed to second all rigorous measures against the puritan ministers, and aggravated that jealousy of the ecclesiastical courts which the common lawyers had long entertained.

§ 12. It is the evident policy of every administration, in dealing with the house of commons, to humor them in every thing that touches their pride and tenaciousness of privilege, never attempting to protect any one who incurs their displeasure by want of respect. This seems to have been understood by the earl of Salisbury, the first English minister who, having long sat in the lower house, had become skillful in those arts of management which his successors have always reckoned so essential a part of their mystery. He wanted a considerable sum of money to defray the king's debts, which, on his coming into the office of lord treasurer after lord Buckhurst's death, he had found to amount to £1,300,000, about one-third of which was still undischarged. The ordinary expense also surpassed the revenue by £81,000. It was impossible that this could continue without involving the crown in such embarrassments as would leave it wholly at the mercy of parliament. Cecil therefore devised the scheme of obtaining a perpetual yearly revenue of £200,000, to be granted once for all by parliament; and, the better to incline the house to this high and extraordinary demand, he promised in the king's name to give all the redress and satisfaction in his power for any grievances they might bring forward.

This offer on the part of government seemed to make an opening for a prosperous adjustment of the differences which had subsisted ever since the king's accession. The commons, accordingly, postponing the business of a subsidy, to which the courtiers wished to give priority, brought forward a host of their accustomed grievances in ecclesiastical and temporal concerns. The most essential was undoubtedly that of impositions, which they sent up a bill to the lords, as above mentioned, to take away. They next complained of the ecclesiastical high commission court, which took upon itself to fine and imprison, powers not belonging to their jurisdiction, and passed sentences without appeal, interfering frequently with civil rights, and in all its procedure neglecting the rules and precautions of the common law. They dwelt on the late abuse of proclamations assuming the character of laws. They proceeded, after a list of illegal proclamations, to enumerate other grievances, such as the delay of courts of law in granting writs of prohibition and habeas corpus, the jurisdiction of the council of Wales over the four bordering shires of Gloucester, Worcester, Hereford, and Salop,[1] some patents of

[1] The court of the council of Wales was erected by statute 34 H. VIII., c. 26, for that principality and its marches, with authority to determine such causes and mat-

monopolies, and a tax under the name of a license recently set upon victualers. The king answered these remonstrances with civility, making, as usual, no concession with respect to the ecclesiastical commission, and evading some of their other requests; but promising that his proclamations should go no farther than was warranted by law, and that the royal licenses to victualers should be revoked.

It appears that the commons, deeming these enumerated abuses contrary to law, were unwilling to chaffer with the crown for the restitution of their actual rights. There were, however, parts of the prerogative which they could not dispute, though galled by the burden—the incidents of feudal tenure and purveyance. A negotiation was accordingly commenced and carried on for some time with the court for abolishing both these, or at least the former. The king, though he refused to part with tenure by knight's service, which he thought connected with the honor of the monarchy, was induced, with some real or pretended reluctance, to give up its lucrative incidents, relief, primer seizin, and wardship, as well as the right of purveyance. But material difficulties recurred in the prosecution of this treaty. After a good deal of haggling, Salisbury delivered the king's final determination to accept of £200,000 per annum, which the commons voted to grant as a full composition for abolishing the right of wardship and dissolving the court that managed it, and for taking away all purveyance; with some further concessions, and particularly that the king's claim to lands should be bound by sixty years' prescription. Two points yet remained, of no small moment; namely, by what assurance they could secure themselves against the king's prerogative, so often held up by the court lawyers as something uncontrollable by statute, and by what means so great an imposition should be levied; but the consideration of these was reserved for the ensuing session, which was to take place in October. They were prorogued in July till that month, having previously granted a subsidy for the king's immediate exigencies. On their meeting again, the lords began the business by requesting a conference with the other house about the proposed

ters as should be assigned to them by the king, "as heretofore hath been accustomed and used;" which implies a previous existence of some such jurisdiction. It was pretended that the four counties of Hereford, Worcester, Gloucester, and Salop were included within their authority as marches of Wales. This was controverted in the reign of James by the inhabitants of these counties; and on reference to the twelve judges, according to lord Coke, it was resolved that they were ancient English shires, and not within the jurisdiction of the council of Wales; "and yet," he subjoins, "the commission was not after reformed in all points as it ought to have been." The complaints of this enactment had begun in the time of Elizabeth.

contract. But it appeared that the commons had lost their disposition to comply. Time had been given them to calculate the disproportion of the terms, and the perpetual burden that lands held by knights' service must endure. They had reflected, too, on the king's prodigal humor, the rapacity of the Scots in his service, and the probability that this additional revenue would be wasted without sustaining the national honor, or preventing future applications for money. They saw that, after all the specious promises by which they had been led on, no redress was to be expected as to those grievances they had most at heart; that the ecclesiastical courts would not be suffered to lose a jot of their jurisdiction; that illegal customs were still to be levied at the outports; that proclamations were still to be enforced like acts of parliament. Great coldness accordingly was displayed in their proceedings, and in a short time this distinguished parliament, after sitting nearly seven years, was dissolved by proclamation.

§ 13. It was now perhaps too late for the king, by any reform or concession, to regain that public esteem which he had forfeited. Deceived by an overweening opinion of his own learning, which was not inconsiderable, of his general abilities, which were far from contemptible, and of his capacity for government, which was very small, and confirmed in this delusion by the disgraceful flattery of his courtiers and bishops, he had wholly overlooked the real difficulties of his position—as a foreigner, rather distantly connected with the royal stock, and as a native of a hostile and hateful kingdom come to succeed the most renowned of sovereigns, and to grasp a sceptre which deep policy and long experience had taught her admirably to wield. The people were proud of martial glory; he spoke only of the blessing of the peacemakers: they abhorred the court of Spain; he sought its friendship: they asked indulgence for scrupulous consciences; he would bear no deviation from conformity: they writhed under the yoke of the bishops, whose power he thought necessary to his own—they were animated by a persecuting temper toward the catholics; he was averse to extreme rigor: they had been used to the utmost frugality in dispensing the public treasure; he squandered it on unworthy favorites: they had seen at least exterior decency of morals prevail in the queen's court; they now heard only of its dissoluteness and extravagance: they had imbibed an exclusive fondness for the common law as the source of their liberties and privileges; his churchmen and courtiers, but

none more than himself, talked of absolute power and the imprescriptible rights of monarchy.

§ 14. James lost in 1611 his son prince Henry, and in 1612 the lord-treasurer Salisbury. He showed little regret for the former, whose high spirit and great popularity afforded a mortifying contrast, especially as the young prince had not taken sufficient pains to disguise his contempt for his father. Salisbury was a very able man, to whom, perhaps, his contemporaries did some injustice. The ministers of weak and willful monarchs are made answerable for the mischiefs they are compelled to suffer, and gain no credit for those which they prevent. Cecil had made personal enemies of those who had loved Essex or admired Raleigh, as well as those who looked invidiously on his elevation. It was believed that the desire shown by the house of commons to abolish the feudal wardships proceeded in a great measure from the circumstance that this obnoxious minister was master of the court of wards, an office both lucrative and productive of much influence. But he came into the scheme of abolishing it with a readiness that did him credit. His chief praise, however, was his management of continental relations. The only minister of James's cabinet who had been trained in the councils of Elizabeth, he retained some of her jealousy of Spain and of her regard for the protestant interests. The court of Madrid, aware both of the king's pusillanimity and of his favorable dispositions, affected a tone in the conferences held in 1604 about a treaty of peace which Elizabeth would have resented in a very different manner. On this occasion he not only deserted the United Provinces, but gave hopes to Spain that he might, if they persevered in their obstinacy, take part against them. Nor have I any doubt that his blind attachment to that power would have precipitated him into a ruinous connection, if Cecil's wisdom had not influenced his councils. During this minister's life our foreign politics seem to have been conducted with as much firmness and prudence as his master's temper would allow; the mediation of England was of considerable service in bringing about the great truce of twelve years between Spain and Holland in 1609; and in the dispute which sprang up soon afterward concerning the succession to the duchies of Cleves and Juliers, a dispute which threatened to mingle in arms the catholic and protestant parties throughout Europe, our councils were full of a vigor and promptitude unusual in this reign, nor did any thing but the assassination of Henry IV. prevent the appearance of an English army in

the Netherlands. It must at least be confessed that the king's affairs, both at home and abroad, were far worse conducted after the death of the earl of Salisbury than before.

§ 15. The administration found an important disadvantage, about this time, in a sort of defection of sir Edward Coke (more usually called lord Coke), chief-justice of the king's bench, from the side of prerogative. He was a man of strong though narrow intellect; confessedly the greatest master of English law that had ever appeared, but proud and overbearing, a flatterer and tool of the court till he had obtained his ends, and odious to the nation for the brutal manner in which, as attorney-general, he had behaved toward sir Walter Raleigh on his trial. In raising him to the post of chief-justice the council had of course relied on finding his unfathomable stores of precedent subservient to their purposes. But, soon after his promotion, Coke, from various causes, began to steer a more independent course. He was little formed to endure a competitor in his own profession, and lived on ill terms both with the lord-chancellor Egerton, and with the attorney-general, sir Francis Bacon. The latter had long been his rival and enemy. Discountenanced by Elizabeth, who, against the importunity of Essex, had raised Coke over his head, that great and aspiring genius was now high in the king's favor. The chief-justice affected to look down on one as inferior to him in knowledge of our municipal law, as he was superior in all other learning and in all the philosophy of jurisprudence. And the mutual enmity of these illustrious men never ceased till each in his turn satiated his revenge by the other's fall. Coke was also much offended by the attempts of the bishops to emancipate their ecclesiastical courts from the civil jurisdiction. But as the king and some of the council rather favored these episcopal pretensions, they were troubled by what they deemed his obstinacy, and discovered more and more that they had to deal with a most impracticable spirit.

It would be invidious to exclude from the motives that altered lord Coke's behavior in matters of prerogative his real affection for the laws of the land, which novel systems, broached by the churchmen and civilians, threatened to subvert. In Bates's case, which seems to have come in some shape extra-judicially before him, he had delivered an opinion in favor of the king's right to impose at the outports; but so cautiously guarded, and bottomed on such different grounds from those taken by the barons of the exchequer, that it could not be cited in favor of any fresh encroach-

ments. He now performed a great service to his country. The practice of issuing proclamations, by way of temporary regulation indeed, but interfering with the subject's liberty, in cases unprovided for by parliament, had grown still more usual than under Elizabeth. Coke was sent for to attend some of the council, who might perhaps have reason to conjecture his sentiments, and it was demanded whether the king, by his proclamation, might prohibit new buildings about London, and whether he might prohibit the making of starch from wheat. This was during the session of parliament in 1610, and with a view to what answer the king should make to the commons' remonstrance against these proclamations. Coke replied that it was a matter of great importance, on which he would confer with his brethren. This was agreed to by the council and three judges, besides Coke, appointed to consider it. They resolved that the king, by his proclamation, can not create any offense which was not one before; for then he might alter the law of the land in a high point; for if he may create an offense where none is, upon that ensues fine and imprisonment. It was also resolved that the king hath no prerogative but what the law of the land allows him. But the king, for the prevention of offenses, may by proclamation admonish all his subjects that they keep the laws and do not offend them, upon punishment to be inflicted by the law; and the neglect of such proclamation, Coke says, aggravates the offense. Lastly, they resolved that, if an offense be not punishable in the star-chamber, the prohibition of it by proclamation can not make it so. After this resolution, the report goes on to remark, no proclamation imposing fine and imprisonment was made.

§ 16. By the abrupt dissolution of parliament James was left nearly in the same necessity as before: their subsidy being by no means sufficient to defray his expenses, far less to discharge his debts. He had frequently betaken himself to the usual resource of applying to private subjects, especially rich merchants, for loans of money. These loans, which bore no interest, and for the repayment of which there was no security, disturbed the prudent citizens, especially as the council used to solicit them with a degree of importunity at least bordering on compulsion. Forced loans or benevolences were directly prohibited by an act of Richard III., whose laws, however the court might sometimes throw a slur upon his usurpation, had always been in the statute-book. After the dissolution of 1610, James attempted as usual to obtain loans; but the merchants, grown bolder with the spirit of the times,

refused him the accommodation. He had recourse to another method of raising money, unprecedented, I believe, before his reign, though long practiced in France, the sale of honors. He sold several peerages for considerable sums, and created a new order of hereditary knights, called baronets, who paid £1000 each for their patents.

§ 17. Such resources, however, being evidently insufficient and temporary, it was almost indispensable to try once more the temper of a parliament. This was strongly urged by Bacon, whose fertility of invention rendered him constitutionally sanguine of success. He submitted to the king that there were expedients for more judiciously managing a house of commons than Cecil, upon whom he was too willing to throw blame, had done with the last: that some of those who had been most forward in opposing were now won over, such as Neville, Yelverton, Hyde, Crew, Dudley Digges; that much might be done by forethought toward filling the house with well-affected persons, winning or blinding the lawyers, whom he calls "the literæ vocales of the house," and drawing the chief constituent bodies of the assembly, the country gentlemen, the merchants, the courtiers, to act for the king's advantage; that it would be expedient to tender voluntarily certain graces and modifications of the king's prerogative, such as might with smallest injury be conceded, lest they should be first demanded, and in order to save more important points. This advice was seconded by sir Henry Neville, an ambitious man, who had narrowly escaped in the queen's time for having tampered in Essex's conspiracy, and had much promoted the opposition in the late parliament, but was now seeking the post of secretary of state. Neville, and others who, like him, professed to understand the temper of the commons, and to facilitate the king's dealings with them, were called *undertakers.* This circumstance, like several others in the present reign, is curious, as it shows the rise of a systematic parliamentary influence, which was one day to become the mainspring of government.

Neville, however, and his associates, had deceived the courtiers with promises they could not realize. It was resolved to announce certain intended graces in the speech from the throne; that is, to declare the king's readiness to pass bills that might remedy some grievances and retrench a part of his prerogative. These proffered amendments of the law, though eleven in number, failed altogether of giving the content that had been fully expected. Except the repeal of a strange act of Henry VIII., allowing the king to make

such laws as he should think fit for the principality of Wales without consent of parliament, none of them could perhaps be reckoned of any constitutional importance. In all domanial and fiscal causes, and wherever the private interests of the crown stood in competition with those of the subject, the former enjoyed enormous and superior advantages, whereof what is strictly called its prerogative was principally composed. The terms of prescription that bound other men's right, the rules of pleading and procedure established for the sake of truth and justice, did not in general oblige the king. It was not by doing away a very few of these invidious and oppressive distinctions that the crown could be allowed to keep on foot still more momentous abuses. The commons of 1614 accordingly went at once to the characteristic grievance of this reign, the customs at the outports. They had grown so confident in their cause by ransacking ancient records, that a unanimous vote passed against the king's right of imposition; not that there were no courtiers in the house, but the cry was too obstreperous to be withstood. They demanded a conference on the subject with the lords, who preserved a kind of mediating neutrality throughout this reign. This ill-humor of the commons disconcerted those who had relied on the undertakers. But as the secret of these men had not been kept, their project considerably aggravated the prevailing discontent. The king had positively denied in his first speech that there were any such undertakers; and Bacon, then attorney-general, laughed at the chimerical notion that private men should undertake for all the commons of England. That some persons, however, had obtained that name at court, and held out such promises, is at present out of doubt; and indeed the king, forgetful of his former denial, expressly confessed it on opening the session of 1621.

Amidst these heats little progress was made; and no one took up the essential business of supply. The king at length sent a message requesting that a supply might be granted, with a threat of dissolving parliament unless it were done. But the days of intimidation were gone by. The house voted that they would first proceed with the business of impositions, and postpone supply till their grievances should be redressed. Aware of the impossibility of conquering their resolution, the king carried his measure into effect by a dissolution. They had sat about two months, and, what is perhaps unprecedented in our history, had not passed a single bill. James followed up this strong step by one still more vigorous. Several members, who had distinguished them-

selves by warm language against the government, were arrested after the dissolution, and kept for a short time in custody; a manifest violation of that freedom of speech, without which no assembly can be independent, and which is the stipulated privilege of the house of commons.

§ 18. It was now evident that James could never expect to be on terms of harmony with a parliament, unless by surrendering pretensions which not only were in his eyes indispensable to the lustre of his monarchy, but from which he derived an income that he had no means of replacing. He went on accordingly for six years, supplying his exigencies by such precarious resources as circumstances might furnish. He restored the towns mortgaged by the Dutch to Elizabeth on payment of 2,700,000 florins, about one-third of the original debt. The enormous fines imposed by the star-chamber, though seldom, I believe, enforced to their utmost extent, must have considerably enriched the exchequer. It is said by Carte that some Dutch merchants paid fines to the amount of £133,000 for exporting gold coin. But still greater profit was hoped from the requisition of that more than half involuntary contribution, miscalled a benevolence. It began by a subscription of the nobility and principal persons about the court. Letters were sent written to the sheriffs and magistrates, directing them to call on people of ability. It had always been supposed doubtful whether the statute of Richard III. abrogating "exactions, called benevolences," should extend to voluntary gifts at the solicitation of the crown. The language used in that act certainly implies that the pretended benevolences of Edward's reign had been extorted against the subjects' will; yet if positive violence were not employed, it seems difficult to find a legal criterion by which to distinguish the effects of willing loyalty from those of fear or shame. Lord Coke is said to have at first declared that the king could not solicit a benevolence from his subjects, but to have afterward retracted his opinion and pronounced in favor of its legality. To this second opinion he adheres in his "Reports." While this business was pending, Mr. Oliver St. John wrote a letter to the mayor of Marlborough, explaining his reasons for declining to contribute, founded on the several statutes which he deemed applicable, and on the impropriety of particular men opposing their judgment to the commons in parliament, who had refused to grant any subsidy. This argument, in itself exasperating, he followed up by somewhat blunt observations on the king. His letter came under the consideration of the star-chamber, where the

offense having been severely descanted upon by the attorney-general, Mr. St. John was sentenced to a fine of £5000 and to imprisonment during pleasure.

Coke, though still much at the council-board, was regarded with increasing dislike on account of his uncompromising humor. This he had occasion to display in perhaps the worst and most tyrannical act of king James's reign, the prosecution of one Peacham, a minister in Somersetshire, for high treason. A sermon had been found in this man's study (it does not appear what led to the search), never preached, nor, if judge Coke is right, intended to be preached, containing such sharp censures upon the king, and invectives against the government, as, had they been published, would have amounted to a seditious libel. But common sense revolted at construing it into treason under the statute of Edward III., as a compassing of the king's death. James, however, took it up with indecent eagerness. Peacham was put to the rack, and examined upon various interrogatories, as it is expressed by secretary Winwood, "before torture, in torture, between torture, and after torture." Nothing could be drawn from him as to any accomplices, nor any explanation of his design in writing the sermon; which was probably but an intemperate effusion, so common among the puritan clergy. It was necessary, therefore, to rely on this as the overt act of treason. Aware of the difficulties that attended this course, the king directed Bacon previously to confer with the judges of the king's bench, one by one, in order to secure their determination for the crown. Coke objected that "such particular, and, as he called it, auricular taking of opinions was not according to the custom of this realm." The other three judges, having been tampered with, agreed to answer such questions concerning the case as the king might direct to be put to them; yielding to the sophism that every judge was bound by his oath to give counsel to his majesty. The chief-justice continued to maintain his objection to this separate closeting of judges; yet, finding himself abandoned by his colleagues, consented to give answers in writing, which seem to have been merely evasive. Peacham was brought to trial, and found guilty, but not executed, dying in prison a few months after.

§ 19. It was not long before the intrepid chief-justice incurred again the council's displeasure. This will require, for the sake of part of my readers, some little previous explanation. The equitable jurisdiction, as it is called, of the court of chancery appears to have been derived from that exten-

sive judicial power which, in early times, the king's ordinary council had exercised. The chancellor, as one of the highest officers of state, took a great share in the council's business; and when it was not sitting, he had a court of his own, with jurisdiction in many important matters, out of which process to compel appearance of parties might at any time emanate. It is not unlikely, therefore, that redress, in matters beyond the legal province of the chancellor, was occasionally given through the paramount authority of this court. We find the council and the chancery named together in many remonstrances of the commons against this interference with private rights, from the time of Richard II. to that of Henry VI. It was probably in the former reign that the chancellor began to establish systematically his peculiar restraining jurisdiction. This originated in the practice of feoffments to uses, by which the feoffee, who had legal seizin of the land, stood bound by private engagement to suffer another, called the cestui que use, to enjoy its use and possession. Such fiduciary estates were well known to the Roman jurists, but inconsistent with the feudal genius of our law. The courts of justice gave no redress, if the feoffee to uses violated his trust by detaining the land. To remedy this, an ecclesiastical chancellor devised the writ of subpœna, compelling him to answer upon oath as to his trust. It was evidently necessary also to restrain him from proceeding, as he might do, to obtain possession; and this gave rise to injunctions, that is, prohibitions to sue at law, the violation of which was punishable by imprisonment as a contempt of court. Other instances of breach of trust occurred in personal contracts, and cases also wherein, without any trust, there was a wrong committed beyond the competence of the courts of law to redress; to all which the process of subpœna was made applicable. This extension of a novel jurisdiction was partly owing to a fundamental principle of our common law, that a defendant can not be examined; so that, if no witness or written instrument could be produced to prove a demand, the plaintiff was wholly debarred of justice: but in a still greater degree to a strange narrowness and scrupulosity of the judges, who, fearful of quitting the letter of their precedents, even with the clearest analogies to guide them, repelled so many just suits, and set up rules of so much hardship, that men were thankful to embrace the relief held out by a tribunal acting in a more rational spirit. This error the common lawyers began to discover in time to resume a great part of their jurisdiction in matters of contract, which would otherwise have es-

caped from them. They made, too, an apparently successful effort to recover their exclusive authority over real property, by obtaining a statute for turning uses into possession; that is, for annihilating the fictitious estate of the feoffee to uses, and vesting the legal as well as equitable possession in the cestui que use. But this victory, if I may use such an expression (since it would have freed them, in a most important point, from the chancellor's control), they threw away by one of those timid and narrow constructions which had already turned so much to their prejudice; and they permitted trust estates, by the introduction of a few more words into a conveyance, to maintain their ground, contradistinguished from the legal seizin, under the protection and guarantee, as before, of the courts of equity.

The particular limits of this equitable jurisdiction were as yet exceedingly indefinite. The chancellors were generally prone to extend them; and being at the same time ministers of state in a government of very arbitrary temper, regarded too little that course of precedent by which the other judges held themselves too strictly bound. The cases reckoned cognizable in chancery grew silently more and more numerous; but with little overt opposition from the courts of law till the time of sir Edward Coke. That great master of the common law was inspired not only with the jealousy of this irregular and encroaching jurisdiction which most lawyers seem to have felt, but with a tenaciousness of his own dignity, and a personal enmity toward Egerton, who held the great seal. It happened that an action was tried before him, the precise circumstances of which do not appear, wherein the plaintiff lost the verdict in consequence of one of his witnesses being artfully kept away. He had recourse to the court of chancery, filing a bill against the defendant to make him answer upon oath, which he refused to do, and was committed for contempt. Indictments were upon this preferred, at Coke's instigation, against the parties who had filed the bill in chancery, their counsel and solicitors, for suing in another court after judgment obtained at law; which was alleged to be contrary to the statute of præmunire. But the grand jury, though pressed, as is said, by one of the judges, threw out these indictments. The king, already incensed with Coke, and stimulated by Bacon, thought this too great an insult upon his chancellor to be passed over. He first directed Bacon and others to search for precedents of cases where relief had been given in chancery after judgment at law. They reported that there was a series of such prece-

dents from the time of Henry VIII.: and some where the chancellor had entertained suits even after execution. The attorney-general was directed to prosecute in the star-chamber those who had preferred the indictments; and as Coke had not been ostensibly implicated in the business, the king contented himself with making an order in the council-book, declaring the chancellor not to have exceeded his jurisdiction.

§ 20. The chief-justice almost at the same time gave another provocation, which exposed him more directly to the court's resentment. A cause happened to be argued in the court of king's bench, wherein the validity of a particular grant of a benefice to a bishop to be held in commendam, that is, along with his bishopric, came into question; and the counsel at the bar, besides the special points of the case, had disputed the king's general prerogative of making such a grant. The king, on receiving information of this, signified to the chief-justice, through the attorney-general, that he would not have the court proceed to judgment till he had spoken with them. Coke requested that similar letters might be written to the judges of all the courts. This having been done, they assembled, and, by a letter subscribed with all their hands, certified his majesty that they were bound by their oaths not to regard any letters that might come to them contrary to law, but to do the law notwithstanding; that they held with one consent the attorney-general's letter to be contrary to law, and such as they could not yield to, and that they had proceeded according to their oath to argue the cause.

The king, who was then at Newmarket, returned answer that he would not suffer his prerogative to be wounded, under pretext of the interests of private persons; that it had already been more boldly dealt with in Westminster Hall than in the reigns of preceding princes, which popular and unlawful liberty he would no longer endure; that their oath not to delay justice was not meant to prejudice the king's prerogative; concluding that out of his absolute power and authority royal he commanded them to forbear meddling any further in the cause till they should hear his pleasure from his own mouth. Upon his return to London the twelve judges appeared as culprits in the council-chamber. The king set forth their misdemeanors, both in substance and in the tone of their letter. He observed that the judges ought to check those advocates who presume to argue against his prerogative; that the popular lawyers had been the men,

ever since his accession, who had trodden in all parliaments upon it, though the law could never be respected if the king were not reverenced; that he had a double prerogative—whereof the one was ordinary, and had relation to his private interest, which might be and was every day disputed in Westminster Hall; the other was of a higher nature, referring to his supreme and imperial power and sovereignty, which ought not to be disputed or handled in vulgar argument; but that of late the courts of common law are grown so vast and transcendent, as they did both meddle with the king's prerogative, and had encroached upon all other courts of justice. He commented on the form of the letter as highly indecent; certifying him merely what they had done, instead of submitting to his princely judgment what they should do.

After this harangue the judges fell upon their knees, and acknowledged their error as to the form of the letter. But Coke entered on a defense of the substance, maintaining the delay required to be against the law and their oaths. The king required the chancellor and attorney-general to deliver their opinions; which, as may be supposed, were diametrically opposite to those of the chief-justice. These being heard, the following question was put to the judges: Whether, if at any time, in a case depending before the judges, his majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly? They all, except the chief-justice, declared that they would do so, and acknowledged it to be their duty; Hobart, chief-justice of the common pleas, adding that he would ever trust the justice of his majesty's commandment. But Coke only answered that, when the case should arise, he would do what should be fit for a judge to do. The king dismissed them all with a command to keep the limits of their several courts, and not to suffer his prerogative to be wounded; for he well knew the true and ancient common law to be the most favorable to kings of any law in the world, to which law he advised them to apply their studies.

The behavior of the judges in this inglorious contention was such as to deprive them of every shadow of that confidence which ought to be reposed in their integrity. Hobart, Doddridge, and several more, were men of much consideration for learning; and their authority in ordinary matters of law is still held high. But, having been induced by a sense

of duty, or through the ascendency that Coke had acquired over them, to make a show of withstanding the court, they behaved like cowardly rebels who surrender at the first discharge of cannon; and prostituted their integrity and their fame, through dread of losing their offices, or rather, perhaps, of incurring the unmerciful and ruinous penalties of the star-chamber.

The government had nothing to fear from such recreants; but Coke was suspended from his office, and not long afterward dismissed. Having, however, fortunately in this respect, married his daughter to a brother of the duke of Buckingham, he was restored in about three years to the privy council, where his great experience in business rendered him useful; and had the satisfaction of voting for an enormous fine on his enemy the earl of Suffolk, late high-treasurer, convicted in the star-chamber of embezzlement. In the parliament of 1621, and still more conspicuously in that of 1628, he became, not without some honorable inconsistency of doctrine as well as practice, the strenuous asserter of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid and patriotic old age, the faults which we can not avoid perceiving in his earlier life.

§ 21. The unconstitutional and usurped authority of the star-chamber overrode every personal right, though an assembled parliament might assert its general privileges. Several remarkable instances in history illustrate its tyranny and contempt of all known laws and liberties. Two puritans, having been committed by the high commission court for refusing the oath ex-officio, employed Mr. Fuller, a bencher of Gray's Inn, to move for their habeas corpus; which he did on the ground that the high commissioners were not empowered to commit any of his majesty's subjects to prison. This being reckoned a heinous offense, he was himself committed, at Bancroft's instigation (whether by the king's personal warrant, or that of the council-board, does not appear), and lay in jail to the day of his death; the archbishop constantly opposing his discharge, for which he petitioned. Whitelock, a barrister and afterward a judge, was brought before the star-chamber on the charge of having given a private opinion to his client, that a certain commission issued by the crown was illegal. This was said to be a high contempt and slander of the king's prerogative. But, after a speech from Bacon in aggravation of this offense, the delinquent was discharged on a humble submission. Such, too, was the fate of

a more distinguished person on a still more preposterous accusation. Selden, in his "History of Tithes," had indirectly weakened the claim of divine right which the high-church faction pretended, and had attacked the argument from prescription, deriving their legal institution from the age of Charlemagne, or even a later era. Not content with letting loose on him some staunch polemical writers, the bishops prevailed on James to summon the author before the council. This proceeding is as much the disgrace of England as that against Galileo nearly at the same time is of Italy. Selden, like the great Florentine astronomer, bent to the rod of power, and made rather too submissive an apology for entering on this purely historical discussion.

§ 22. Every generous mind must reckon the treatment of Arabella Stuart among the hard measures of despotism, even if it were not also grossly in violation of English law. Exposed by her high descent and ambiguous pretensions to become the victim of ambitious designs wherein she did not participate, that lady may be added to the sad list of royal sufferers who have envied the lot of humble birth. There is not, as I believe, the least particle of evidence that she was engaged in the intrigues of the catholic party to place her on the throne. It was, however, thought a necessary precaution to put her in confinement a short time before the queen's death. At the trial of Raleigh she was present; and Cecil openly acquitted her of any share in the conspiracy. She enjoyed afterward a pension from the king, and might have died in peace and obscurity, had she not conceived an unhappy attachment for Mr. Seymour, grandson of that earl of Hertford, himself so memorable an example of the perils of ambitious love. They were privately married; but on the fact transpiring, the council, who saw with jealous eyes the possible union of two dormant pretensions to the crown, committed them to the Tower. They both made their escape, but Arabella was arrested and brought back. Long and hopeless calamity broke down her mind; imploring in vain the just privileges of an Englishwoman, and nearly in want of necessaries, she died in prison, and in a state of lunacy, some years afterward. And this through the oppression of a kinsman whose advocates are always vaunting his goodnature! Her husband became the famous marquis of Hertford, the faithful counselor of Charles I., and partaker of his adversity.

§ 23. Several events, so well known that it is hardly necessary to dwell on them, aggravated the king's unpopulari-

ty during this parliamentary interval. The murder of Overbury burst into light, and revealed to an indignant nation the king's unworthy favorite, the earl of Somerset, and the hoary pander of that favorite's vices, the earl of Northampton, accomplices in that deep-laid and deliberate atrocity. Nor was it only that men so flagitious should have swayed the councils of this country, and rioted in the king's favor. Strange things were whispered, as if the death of Overbury was connected with something that did not yet transpire, and which every effort was employed to conceal. The people, who had already attributed prince Henry's death to poison, now laid it at the door of Somerset; but for that conjecture, however highly countenanced at the time, there could be no foundation. The symptoms of the prince's illness, and the appearances on dissection, are not such as could result from any poison, and manifestly indicate a malignant fever, aggravated perhaps by injudicious treatment. Yet it is certain that a mystery hangs over this scandalous tale of Overbury's murder. The insolence and menaces of Somerset in the Tower, the shrinking apprehensions of him which the king could not conceal, the pains taken by Bacon to prevent his becoming desperate, and, as I suspect, to mislead the hearers by throwing them on a wrong scent, are very remarkable circumstances to which, after a good deal of attention, I can discover no probable clue. But it is evident that he was master of some secret which it would have highly prejudiced the king's honor to divulge.

§ 24. Sir Walter Raleigh's execution was another stain upon the reputation of James I. It is needless to mention that he fell under a sentence passed fifteen years before, on a charge of high treason, in plotting to raise Arabella Stuart to the throne. It is very probable that this charge was, partly at least, founded in truth; but his conviction was obtained on the single deposition of lord Cobham, an accomplice, a prisoner, not examined in court, and known to have already retracted his accusation. Such a verdict was thought contrary to law, even in that age of ready convictions. It was a severe measure to detain for twelve years in prison so splendid an ornament of his country, and to confiscate his whole estate. For Raleigh's conduct in the expedition to Guiana there is not much excuse to make. Rashness and want of foresight were always among his failings; else he would not have undertaken a service of so much hazard without obtaining a regular pardon for his former offense. But it might surely be urged that either his commission was absolutely

null, or that it operated as a pardon; since a man attainted of treason is incapable of exercising that authority which is conferred upon him. Be this as it may, no technical reasoning could overcome the moral sense that revolted at carrying the original sentence unto execution. Raleigh might be amenable to punishment for the deception by which he had obtained a commission that ought never to have issued; but the nation could not help seeing in his death the sacrifice of the bravest and most renowned of Englishmen to the vengeance of Spain.

This unfortunate predilection for the court of Madrid had always exposed James to his subjects' jealousy. They connected it with an inclination at least to tolerate popery, and with a dereliction of their commercial interests. But from the time that he fixed his hopes on the union of his son with the infanta, the popular dislike to Spain increased in proportion to his blind preference. If the king had not systematically disregarded the public wishes, he could never have set his heart on this impolitic match; contrary to the wiser maxim he had laid down in his own Basilicon Doron, never to seek a wife for his son except in a protestant family. But his absurd pride made him despise the uncrowned princes of Germany. This Spanish policy grew much more odious after the memorable events of 1619—the election of the king's son-in-law to the throne of Bohemia, his rapid downfall, and the conquest of the Upper Palatinate by Austria. If James had listened to some sanguine advisers, he would in the first instance have supported the pretensions of Frederick. But neither his own views of public law nor true policy dictated such an interference. The case was changed after the loss of his hereditary dominions, and the king was sincerely desirous to restore him to the Palatinate; but he unreasonably expected that he could effect this through the friendly mediation of Spain, while the nation, not perhaps less unreasonably, were clamorous for his attempting it by force of arms. In this agitation of the public mind he summoned the parliament that met in February, 1621.

§ 25. The king's speech on opening the session was, like all he had made on former occasions, full of hopes and promises, taking cheerfully his share of the blame as to past disagreements, and treating them as little likely to recur though all their causes were still in operation. He displayed, however, more judgment than usual in the commencement of this parliament. Among the methods devised to compensate the want of subsidies, none had been more injurious to the sub-

ject than patents of monopoly, including licenses for exclusively carrying on certain trades. Though the government was principally responsible for the exactions they connived at, and from which they reaped a large benefit, the popular odium fell of course on the monopolists. Of these the most obnoxious was sir Giles Mompesson, who, having obtained a patent for gold and silver thread, sold it of baser metal. This fraud seems neither very extraordinary nor very important; but he had another patent for licensing inns and ale-houses, wherein he is said to have used extreme violence and oppression. The house of commons proceed to investigate Mompesson's delinquency. Conscious that the crown had withdrawn its protection, he fled beyond sea. One Michell, a justice of peace, who had been the instrument of his tyranny, fell into the hands of the commons, who voted him incapable of being in the commission of the peace, and sent him to the Tower. Entertaining however, upon second thoughts, as we must presume, some doubts about their competence to inflict this punishment, especially the former part of it, they took the more prudent course, with respect to Mompesson, of appointing Noy and Hakewill to search for precedents in order to show how far and for what offenses their power extended to punish delinquents against the state as well as those who offended against that house. The result appears some days after, in a vote that "they must join with the lords for punishing sir Giles Mompesson; it being no offense against our particular house, nor any member of it, but a general grievance."

The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords, was that of Lord Latimer in the year 1376. The latest hitherto was that of the duke of Suffolk in 1449. It had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject. The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly. It was not, indeed, conducted according to all the forms of an impeachment. The commons, requesting a conference with the other house, informed them generally of that person's offense, but did not exhibit any distinct articles at their bar. The lords took up them-

selves the inquiry; and, having become satisfied of his guilt, sent a message to the commons that they were ready to pronounce sentence. The speaker, accordingly, attended by all the house, demanded judgment at the bar: when the lords passed as heavy a sentence as could be awarded for any misdemeanor; to which the king, by a stretch of prerogative which no one was then inclined to call in question, was pleased to add perpetual banishment.

The wrath of the commons was justly aroused against that shameless corruption which characterizes the reign of James beyond every other in our history. It is too well known how deeply the greatest man of that age was tarnished by the prevailing iniquity. Complaints poured in against the chancellor Bacon for receiving bribes from suitors in his court. Some have vainly endeavored to discover an excuse which he did not pretend to set up, and even ascribed the prosecution to the malevolence of sir Edward Coke. But Coke took no prominent share in this business; and though some of the charges against Bacon may not appear very heinous, especially for those times, I know not whether the unanimous conviction of such a man, and the conscious pusillanimity of his defense, do not afford a more irresistible presumption of his misconduct than any thing specially alleged. He was abandoned by the court, and had previously lost, as I rather suspect, Buckingham's favor; but the king, who had a sense of his transcendent genius, remitted the fine of £40,000 imposed by the lords, which he was wholly unable to pay.

§ 26. There was much to commend in the severity practiced by the house toward public delinquents; such examples being far more likely to prevent the malversation of men in power than any law they could enact. But in the midst of these laudable proceedings they were hurried by the passions of the moment into an act of most unwarrantable violence. It came to the knowledge of the house that one Floyd, a gentleman confined in the Fleet prison, had used some slighting words about the elector palatine and his wife. It appeared, in aggravation, that he was a Roman catholic. Nothing could exceed the fury into which the commons were thrown by this very insignificant story. A flippant expression, below the cognizance of an ordinary court, grew at once into a portentous offense, which they ransacked their invention to chastise. After sundry novel and monstrous propositions, they fixed upon the most degrading punishment they could devise. Next day, however, the chancellor of the exchequer delivered a message, that the

king, thanking them for their zeal, but desiring that it should not transport them to inconveniences, would have them consider whether they could sentence one who did not belong to them, nor had offended against the house or any member of it; and whether they could sentence a denying party, without the oath of witnesses; referring them to an entry on the rolls of parliament in the first year of Henry IV., that the judicial power of parliament does not belong to the commons. He would have them consider whether it would not be better to leave Floyd to him, who would punish him according to his fault.

This message put them into some embarrassment. They had come to a vote in Mompesson's case, in the very words employed in the king's message, confessing themselves to have no jurisdiction except over offenses against themselves. The warm speakers now controverted this proposition with such arguments as they could muster; Coke, though from the reported debates he seems not to have gone the whole length, contending that the house was a court of record, and that it consequently had power to administer an oath. They returned a message by the speaker, excepting to the record in 1 H. IV., because it was not an act of parliament to bind them, and persisting, though with humility, in their first votes. The king replied mildly; urging them to show precedents, which they were manifestly incapable of doing. The lords requested a conference, which they managed with more temper, and, notwithstanding the solicitude displayed by the commons to maintain their pretended right, succeeded in withdrawing the matter to their own jurisdiction. This conflict of privileges was by no means of service to the unfortunate culprit; the lords perceived that they could not mitigate the sentence of the lower house without reviving their dispute, and vindicated themselves from all suspicion of indifference toward the cause of the Palatinate by augmented severity. Floyd was adjudged to be degraded from his gentility, and to be held an infamous person; his testimony not to be received; to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse's tail, and the tail in his hand, and there to stand two hours in the pillory, and to be branded in the forehead with the letter K; to ride four days afterward in the same manner to Westminster, and there to stand two hours more in the pillory, with words in a paper in his hat showing his offense; to be whipped at the cart's tail from the Fleet to Westminster Hall; to pay a fine of £5000, and to be a prisoner in Newgate during

his life. The whipping was a few days after remitted on prince Charles's motion; but he seems to have undergone the rest of the sentence. There is surely no instance in the annals of our own, and hardly of any civilized country, where a trifling offense, if it were one, has been visited with such outrageous cruelty. The cold-blooded deliberate policy of the lords is still more disgusting than the wild fury of the lower house.

Every thing had hitherto proceeded with harmony between the king and parliament. His ready concurrence in their animadversion on Mompesson and Michell, delinquents who had acted at least with the connivance of government, and in the abolition of monopolies, seemed to remove all discontent. The commons granted two subsidies early in the session without alloying their bounty with a single complaint of grievances. One might suppose that the subject of impositions had been entirely forgotten, not an allusion to them occurring in any debate. They were going on with some bills for reformation of abuses, to which the king was willing to accede, when they received an intimation that he expected them to adjourn over the summer. It produced a good deal of dissatisfaction to see their labor so hastily interrupted; especially as they ascribed it to a want of sufficient sympathy on the court's part with their enthusiastic zeal for the elector palatine. They were adjourned by the king's commission, after a unanimous declaration of their resolution to spend their lives and fortunes for the defense of their own religion and of the Palatinate. This solemn protestation and pledge was entered on record in the journals.

§ 27. They met again after five months, without any change in their views of policy. At a conference of the two houses, lord Digby, by the king's command, explained all that had occurred in his embassy to Germany for the restitution of the Palatinate; which, though absolutely ineffective, was as much as James could reasonably expect without a war. He had in fact, though, according to the laxity of those times, without declaring war on any one, sent a body of troops under sir Horace Vere, who still defended the Lower Palatinate. It was necessary to vote more money, lest these should mutiny for want of pay. And it was stated to the commons in this conference, that to maintain a sufficient army in that country for one year would require £900,000; which was left to their consideration. But now it was seen that men's promises to spend their fortunes in a cause not essentially their own are written in the sand. The commons had no

reason, perhaps, to suspect that the charge of keeping 30,000 men in the heart of Germany would fall much short of the estimate. Yet after long haggling they voted only one subsidy, amounting to £70,000, a sum manifestly insufficient for the first equipment of such a force. This parsimony could hardly be excused by their suspicion of the king's unwillingness to undertake the war, for which it afforded the best justification.

§ 28. James was probably not much displeased at finding so good a pretext for evading a compliance with their martial humor; nor had there been much appearance of dissatisfaction on either side till the commons drew up a petition and remonstrance against the growth of popery; suggesting, among other remedies for this grievance, that the prince should marry one of our own religion, and that the king would direct his efforts against that power (meaning Spain) which first maintained the war in the Palatinate. This petition was proposed by sir Edward Coke. The courtiers opposed it as without precedent; the chancellor of the duchy observing that it was of so high and transcendent a nature, he had never known the like within those walls. Even the mover defended it rather weakly, according to our notions, as intended only to remind the king, but requiring no answer. The petition had not been presented, when the king, having obtained a copy of it, sent a peremptory letter to the speaker, that he thought himself very free and able to punish any man's misdemeanors in parliament, as well during their sitting as after, which he meant not to spare upon occasion of any man's insolent behavior in that place. He assured them that he would not deign to hear their petition if it touched on any of those points which he had forbidden.

The house received this message with unanimous firmness, but without any undue warmth. A committee was appointed to draw up a petition, which, in the most decorous language and with strong professions of regret at his majesty's displeasure, contained a defense of their former proceedings, and hinted very gently that they could not conceive his honor and safety, or the state of the kingdom, to be matters at any time unfit for their deepest consideration in time of parliament. They adverted more pointedly to that part of the king's message which threatened them for liberty of speech, calling it their ancient and undoubted right, and an inheritance received from their ancestors, which they again prayed him to confirm. His answer, though considerably milder than what he had designed, gave indications of a resentment

not yet subdued. He dwelt at length on their unfitness for entering on matters of government, and commented with some asperity even on their present apologetical petition. In the conclusion he observed that, "although he could not allow of the style calling their privileges an undoubted right and inheritance, but could rather have wished that they had said that their privileges were derived from the grace and permission of his ancestors and himself (for most of them had grown from precedent, which rather shows a toleration than inheritance), yet he gave them his royal assurance that, as long as they contained themselves within the limits of their duty, he would be as careful to maintain their lawful liberties and privileges as he would his own prerogative, so that their house did not touch on that prerogative, which would enforce him or any just king to retrench their privileges."

This explicit assertion that the privileges of the commons existed only by sufferance, and conditionally upon good behavior, exasperated the house far more than the denial of their right to enter on matters of state. In the one they were conscious of having somewhat transgressed the boundaries of ordinary precedents; in the other their individual security, and their very existence as a deliberative assembly, were at stake. After a long and warm debate they entered on record in the Journals their famous protestation of December 18th, 1621, in the following words:

"The commons now assembled in parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, among others not herein mentioned, do make this protestation following: That the liberties, franchises, privileges, and jurisdictions of parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defense of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses every member of the house hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; that the commons in parliament have like liberty and freedom to treat of those matters in such order as in their judgments shall seem fittest: and that every such member of the said house hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the house itself), for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the parliament or parliament business; and that, if any of the said members be complained of and questioned for any thing said or done in parliament, the same is to be showed to the king by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information."

This protestation was not likely to pacify the king's anger.

He therefore adjourned, and, in about a fortnight after, dissolved them. But in the interval, having sent for the journal-book, he erased their last protestation with his own hand, and published a declaration of the causes which had provoked him to this unusual measure, alleging the unfitness of such a protest, after his ample assurance of maintaining their privileges, the irregular manner in which, according to him, it was voted, and its ambiguous and general wording, which might serve in future times to invade most of the prerogatives annexed to the imperial crown. In his proclamation for dissolving the parliament James recapitulated all his grounds of offenses; but finally required his subjects to take notice that it was his intention to govern them as his progenitors and predecessors had done, and to call a parliament again on the first convenient occasion. He immediately followed up this dissolution of parliament by dealing his vengeance on its most conspicuous leaders: sir Edward Coke and sir Robert Philips were committed to the Tower; Mr. Pym and one or two more to other prisons; sir Dudley Digges, and several who were somewhat less obnoxious than the former, were sent on a commission to Ireland, as a sort of honorable banishment. The earls of Oxford and Southampton underwent an examination before the council, and the former was committed to the Tower on pretense of having spoken words against the king. It is worthy of observation that, in this session, a portion of the upper house had united in opposing the court. Nothing of this kind is noticed in former parliaments, except perhaps a little on the establishment of the Reformation. In this minority were considerable names: Essex, Southampton, Warwick, Oxford, Say, Spencer. Whether a sense of public wrongs or their particular resentments influenced these noblemen, their opposition must be reckoned an evident sign of the change that was at work in the spirit of the nation, and by which no rank could be wholly unaffected.

§ 29. James, with all his reputed pusillanimity, never showed any signs of fearing popular opinion. His obstinate adherence to the marriage treaty with Spain was the height of political rashness in so critical a state of the public mind. But what with elevated notions of his prerogative, and of his skill in government on the one hand, what with a confidence in the submissive loyalty of the English on the other, he seems constantly to have fancied that all opposition proceeded from a small troublesome faction, whom if he could any way silence, the rest of his people would at once repose

in a dutiful reliance on his wisdom. Hence he met every succeeding parliament with as sanguine hopes as if he had suffered no disappointment in the last. The nation was however wrought up at this time to an alarming pitch of discontent. Libels were in circulation about 1621, so bitterly malignant in their censures of his person and administration, that two hundred years might seem, as we read them, to have been mistaken in their date. Heedless, however, of this growing odium, James continued to solicit the affected coyness of the court of Madrid. The circumstances of that negotiation belong to general history. It is only necessary to remind the reader that the king was induced, during the residence of prince Charles and the duke of Buckingham in Spain, to swear to certain private articles, some of which he had already promised before their departure, by which he bound himself to suspend all penal laws affecting the catholics, to permit the exercise of their religion in private houses, and to procure from parliament if possible a legal toleration. This toleration, as preliminary to the entire re-establishment of popery, had been the first great object of Spain in the treaty. But that court, having protracted the treaty for years, in order to extort more favorable terms, and interposed a thousand pretenses, became the dupe of its own artifices; the resentment of a haughty minion overthrowing with ease the painful fabric of this tedious negotiation.

§ 30. Buckingham obtained a transient and unmerited popularity by thus averting a great public mischief, which rendered the next parliament unexpectedly peaceable. The commons voted three subsidies and three fifteenths, in value about £300,000; but with a condition, proposed by the king himself, that, in order to insure its application to naval and military armaments, it should be paid into the hands of treasurers appointed by themselves, who should issue money only on the warrant of the council of war. He seemed anxious to tread back the steps made in the former session, not only referring the highest matters of state to their consideration, but promising not to treat for peace without their advice. They, on the other hand, acknowledged themselves most bound to his majesty for having been pleased to require their humble service in a case so important, not meaning, we may be sure, by these courteous and loyal expressions, to recede from what they had claimed in the last parliament as their undoubted right.

§ 31. The most remarkable affair in this session was the

impeachment of the earl of Middlesex, actually lord-treasurer of England, for bribery and other misdemeanors. It is well known that the prince of Wales and duke of Buckingham instituted this prosecution, to gratify the latter's private pique, against the wishes of the king, who warned them they would live to have their fill of parliamentary impeachment. It was conducted by managers on the part of the commons in a very regular form, except that the depositions of witnesses were merely read by the clerk; that fundamental rule of English law which insists on the vivâ voce examination being as yet unknown, or dispensed with in political trials. Nothing is more worthy of notice in the proceedings upon this impeachment than what dropped from sir Edwin Sandys, in speaking upon one of the charges. Middlesex had laid an imposition of £3 per tun on French wines, for taking off which he received a gratuity. Sandys commenting on this offense, protested, in the name of the commons, that they intended not to question the power of imposing claimed by the king's prerogative: this they touched not upon now; they continued only their claim, and, when they should have occasion to dispute it, would do so with all due regard to his majesty's state and revenue. Such cautious and temperate language, far from indicating any disposition to recede from their pretensions, is rather a proof of such united steadiness and discretion as must insure their success. Middlesex was unanimously convicted by the peers. His impeachment was of the highest moment to the commons, as it restored forever that salutary constitutional right which the single precedent of lord Bacon might have been insufficient to establish against the ministers of the crown.

§ 32. The last two parliaments had been dissolved without passing a single act, except the subsidy bill of 1621. An interval of legislation for thirteen years was too long for any civilized country. Several statutes were enacted in the present session, but none so material as that for abolishing monopolies for the sale of merchandise, or for using any trade. This is of a declaratory nature, and recites that they are already contrary to the ancient and fundamental laws of the realm. Scarce any difference arose between the crown and the commons. This singular calm might probably have been interrupted had not the king put an end to the session. They expressed some little dissatisfaction at this step, and presented a list of grievances, one only of which is sufficiently considerable to deserve notice; namely, the proclamations already mentioned in restraint of building about London,

whereof they complain in very gentle terms, considering their obvious illegality and violation of private right.

The commons had now been engaged for more than twenty years in a struggle to restore and to fortify their own and their fellow-subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against monopolies. But they had rescued from disuse their ancient right of impeachment. They had placed on record a protestation of their claim to debate all matters of public concern. They had remonstrated against the usurped prerogatives of binding the subject by proclamation, and of levying customs at the outports. They had secured beyond controversy their exclusive privilege of determining contested elections of their members. Of these advantages some were evidently incomplete, and it would require the most vigorous exertions of future parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class except perhaps the clergy, from which, when viewed together with the rash pride of the court and the uncertainty of constitutional principles and precedents, collected through our long and various history, a calm by-stander might presage that the ensuing reign would not pass without disturbance, nor perhaps end without confusion.

CHAPTER VII.

ON THE ENGLISH CONSTITUTION FROM THE ACCESSION OF CHARLES I. TO THE DISSOLUTION OF HIS THIRD PARLIAMENT.

§ 1. Parliament of 1625. Its Dissolution. § 2. Another Parliament called. Prosecution of Buckingham. § 3. Arbitrary Proceedings toward the Earls of Arundel and Bristol. § 4. Loan demanded by the King. Several committed for refusal to contribute. They sue for a Habeas Corpus. § 5. Arguments on this Question, which is decided against them. § 6. A Parliament called in 1628. Petition of Right. § 7. Tonnage and Poundage disputed. King dissolves Parliament. § 8. Religious Differences. Prosecution of Puritans by Bancroft. § 9. Growth of High-Church Tenets. § 10. Differences as to the Observance of Sunday. § 11. Arminian Controversy. § 12. State of Catholics under James. Jealousy of the Court's Favor toward them. § 13. Unconstitutional Tenets promulgated by the High-Church Party. § 14. General Remarks.

§ 1. CHARLES I. had much in his character very suitable to the times in which he lived, and to the spirit of the people he was to rule; a stern and serious deportment, a disinclination to all licentiousness, and a sense of religion that seemed more real than in his father. These qualities we might suppose to have raised some expectation of him, and to have procured at his accession some of that popularity which is rarely withheld from untried princes. Yet it does not appear that he enjoyed even this first transient sunshine of his subjects' affection. Solely intent on retrenching the excesses of prerogative, and well aware that no sovereign would voluntarily recede from the possession of power, they seem to have dreaded to admit into their bosoms any sentiments of personal loyalty which might enervate their resolution. And Charles took speedy means to convince them that they had not erred in withholding their confidence.

Elizabeth in her systematic parsimony, James in his averseness to war, had been alike influenced by a consciousness that want of money alone could render a parliament formidable to their power. None of the irregular modes of supply were ever productive enough to compensate for the clamor they occasioned; after impositions and benevolences were exhausted, it had always been found necessary, in the most arbitrary times of the Tudors, to fall back on the representatives of the people. But Charles succeeded to a war, at least to the preparation of a war, rashly undertaken through his own weak compliance, the arrogance of his favorite, and the

generous or fanatical zeal of the last parliament. He would have perceived it to be manifestly impossible, if he had been capable of understanding his own position, to continue this war without the constant assistance of the house of commons, or to obtain that assistance without very costly sacrifices of his royal power. It was not the least of this monarch's imprudences, or rather of his blind compliances with Buckingham, to have not only commenced hostilities against Spain which he might easily have avoided,[1] and persisted in them for four years, but entered on a fresh war with France, though he had abundant experience to demonstrate the impossibility of defraying its charges.

The first parliament of this reign has been severely censured on account of the penurious supply it doled out for the exigencies of a war in which its predecessors had involved the king. I will not say that this reproach is wholly unfounded. A more liberal proceeding, if it did not obtain a reciprocal concession from the king, would have put him more in the wrong. But, according to the common practice and character of all such assemblies, it was preposterous to expect subsidies equal to the occasion until a foundation of confidence should be laid between the crown and parliament. The commons had begun probably to repent of their hastiness in the preceding year, and to discover that Buckingham and his pupil, or master (which shall we say?), had conspired to deceive them. They were not to forget that none of the chief grievances of the last reign were yet redressed, and that supplies must be voted slowly and conditionally if they would hope for reformation. Hence they made their grant of tonnage and poundage to last but for a year instead of the king's life, as had for two centuries been the practice; on which account the upper house rejected the bill. Nor would they have refused a further supply, beyond the two subsidies (about £140,000) which they had granted, had some tender of redress been made by the crown; and were actually in debate upon the matter when interrupted by a sudden dissolution.

§ 2. Nothing could be more evident, by the experience of the late reign as well as by observing the state of public spirit, than that hasty and premature dissolutions or prorogations of parliament served but to aggravate the crown's embarrassments. Every successive house of commons inher-

[1] War had not been declared at Charles's accession, nor at the dissolution of the first parliament. In fact, he was much more set upon it than his subjects. Hume and all his school kept this out of sight.

ited the feelings of its predecessor, without which it would have ill represented the prevalent humor of the nation. The same men, for the most part, came again to parliament more irritated and desperate of reconciliation with the sovereign than before. Even the politic measure, as it was fancied to be, of excluding some of the most active members from seats in the new assembly, by nominating them sheriffs for the year, failed altogether of the expected success; as it naturally must in an age when all ranks partook in a common enthusiasm. Hence the prosecution against Buckingham, to avert which Charles had dissolved his first parliament, was commenced with redoubled vigor in the second. It was too late, after the precedents of Bacon and Middlesex, to dispute the right of the commons to impeach a minister of state. The king, however, anticipating their resolutions, after some sharp speeches only had been uttered against his favorite, sent a message that he would not allow any of his servants to be questioned among them, much less such as were of eminent place and near unto him. He saw, he said, that some of them aimed at the duke of Buckingham, whom, in the last parliament of his father, all had combined to honor and respect, nor did he know what had happened since to alter their affections; but he assured them that the duke had done nothing without his own special direction and appointment. This haughty message so provoked the commons, that, having no express testimony against Buckingham, they came to a vote that common fame is a good ground of proceeding either by inquiry or presenting the complaint to the king or lords; nor did a speech from the lord-keeper, severely rating their presumption, tend to pacify or to intimidate the assembly. The duke was accordingly impeached at the bar of the house of peers on eight articles, many of them probably well founded; yet, as the commons heard no evidence in support of them, it was rather unreasonable in them to request that he might be committed to the Tower.

§ 3. In the conduct of this impeachment, two of the managers, sir John Eliot and sir Dudley Digges, one the most illustrious confessor in the cause of liberty whom that time produced, the other a man of much ability and a useful supporter of the popular party, though not free from some oblique views toward promotion, gave such offense by words spoken, or alleged to be spoken, in derogation of his majesty's honor, that they were committed to the Tower. The commons of course resented this new outrage. They resolved to do no more business till they were righted in their

privileges. They denied the words imputed to Digges; and, thirty-six peers asserting that he had not spoken them, the king admitted that he was mistaken, and released both their members. He had already broken in upon the privileges of the house of lords by committing the earl of Arundel to the Tower during the session; not upon any political charge, but, as was commonly surmised, on account of a marriage which his son had made with a lady of royal blood. Such private offenses were sufficient in those arbitrary reigns to expose the subject to indefinite imprisonment, if not to an actual sentence in the star-chamber. The lords took up this detention of one of their body, and, after formal examination of precedents by a committee, came to a resolution, "that no lord of parliament, the parliament sitting, or within the usual times of privilege of parliament, is to be imprisoned or restrained without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety for the peace." This assertion of privilege was manifestly warranted by the co-extensive liberties of the commons. After various messages between the king and lords, Arundel was ultimately set at liberty.

This infringement of the rights of the peerage was accompanied by another not less injurious, the refusal of a writ of summons to the earl of Bristol. The lords were justly tenacious of this unquestionable privilege of their order, without which its constitutional dignity and independence could never be maintained. The house necessarily insisted upon Bristol's receiving his summons, which was sent him with an injunction not to comply with it by taking his place. But the spirited earl knew that the king's constitutional will expressed in the writ ought to outweigh his private command, and laid the secretary's letter before the house of lords. The king prevented any further interference in his behalf by causing articles of charge to be exhibited against him by the attorney-general, whereon he was committed to the Tower. These assaults on the pride and consequence of an aristocratic assembly, from whom alone the king could expect effectual support, display his unfitness not only for the government of England, but of any other nation. Nor was his conduct toward Bristol less oppressive than impolitic. If we look at the harsh and indecent employment of his own authority, and even testimony, to influence a criminal process against a man of approved and untainted worth, and his sanction of charges which, if Bristol's defense be as true as it is now generally admitted to be, he must have known to be un-

founded, we shall hardly concur with those candid persons who believe that Charles would have been an excellent prince in a more absolute monarchy. Nothing, in truth, can be more preposterous than to maintain, like Clarendon and Hume, the integrity and innocence of lord Bristol, together with the sincerity and humanity of Charles I.

§ 4. Though the lords petitioned against a dissolution, the king was determined to protect his favorite, and rescue himself from the importunities of so refractory a house of commons. Perhaps he had already taken the resolution of governing without the concurrence of parliaments, though he was induced to break it the ensuing year. For, the commons having delayed to pass a bill for the five subsidies which they had voted in this session till they should obtain some satisfaction for their complaints, he was left without any regular supply. This was not wholly unacceptable to some of his councilors, and probably to himself, as affording a pretext for those unauthorized demands which the advocates of arbitrary prerogative deemed more consonant to the monarch's honor. He had issued letters of privy seal, after the former parliament, to those in every county whose names had been returned by the lord-lieutenant as most capable, mentioning the sum they were required to lend, with a promise of repayment in eighteen months. This specification of a particular sum was reckoned an unusual encroachment, and a manifest breach of the statute against arbitrary benevolences; especially as the names of those who refused compliance were to be returned to the council. But the government now ventured on a still more outrageous stretch of power. They first attempted to persuade the people that, as subsidies had been voted in the house of commons, they should not refuse to pay them, though no bill had been passed for that purpose. But a tumultuous cry was raised in Westminster Hall from those who had been convened, that they would pay no subsidy but by authority of parliament. This course, therefore, was abandoned for one hardly less unconstitutional. A general loan was demanded from every subject, according to the rate at which he was assessed in the last subsidy. The commissioners appointed for the collection of this loan received private instructions to require not less than a certain proportion of each man's property in lands or goods, to treat separately with every one, to examine on oath such as should refuse, to certify the names of refractory persons to the privy council, and to admit of no excuse for abatement of the sum required.

This arbitrary taxation (for the name of loan could not disguise the extreme improbability that the money would be repaid), so general and systematic as well as so weighty, could not be endured without establishing a precedent that must have shortly put an end to the existence of parliaments. But the kingdom was not in a temper to put up with tyranny. The king's advisers were as little disposed to recede from their attempt. They prepared to enforce it by the arm of power. The common people who refused to contribute were impressed to serve in the navy. The gentry were bound by recognizance to appear at the council-chamber, where many of them were committed to prison. Among these were five knights, Darnel, Corbet, Earl, Heveningham, and Hampden, who sued the court of queen's bench for their writ of habeas corpus. The writ was granted; but the warden of the Fleet made return that they were detained by a warrant from the privy council, informing him of no particular cause of imprisonment, but that they were committed by the special command of his majesty. This gave rise to a most important question, whether such a return was sufficient in law to justify the court in remitting the parties to custody. The fundamental immunity of English subjects from arbitrary detention had never before been so fully canvassed; and it is to the discussion which arose out of the case of these five gentlemen that we owe its continual assertion by parliament, and its ultimate establishment in full practical efficacy by the statute of Charles II. It was argued with great ability by Noy, Selden, and other eminent lawyers, on behalf of the claimants, and by the attorney-general Heath for the crown.

§ 5. The counsel for the prisoners grounded their demand of liberty on the original basis of Magna Charta, the twenty-ninth section of which, as is well known, provides that "no free man shall be taken or imprisoned unless by lawful judgment of his peers, or the law of the land." This principle having been frequently transgressed by the king's privy council in earlier times, statutes had been repeatedly enacted, independently of the general confirmations of the charter, to redress this material grievance. Thus in the 25th of Edward III. it is provided that "no one shall be taken by petition or suggestion to the king or his council, unless it be (*i. e.*, but only) by indictment or presentment, or by writ original at the common law." And this is again enacted three years afterward, with little variation, and once again in the course of the same reign. It was never understood,

whatever the loose language of these old statutes might suggest, that no man could be kept in custody upon a criminal charge before indictment, which would have afforded too great security to offenders. But it was the regular practice that every warrant of commitment, and every return by a jailer to the writ of habeas corpus, must express the nature of the charge, so that it might appear whether it were no legal offense, in which case the party must be instantly set at liberty; or one for which bail ought to be taken; or one for which he must be remanded to prison. It appears also to have been admitted without controversy, though not perhaps according to the strict letter of law, that the privy council might commit to prison on a criminal charge, since it seemed preposterous to deny that power to those intrusted with the care of the commonwealth which every petty magistrate enjoyed. But it was contended that they were as much bound as every petty magistrate to assign such a cause for their commitments as might enable the court of king's bench to determine whether it should release or remand the prisoner brought before them by habeas corpus.

The advocates for this principle alleged several precedents from the reign of Henry VII. to that of James, where persons committed by the council generally, or even by the special command of the king, had been admitted to bail on their habeas corpus. "But I conceive," said one of these, "that our case will not stand upon precedent, but upon the fundamental laws and statutes of this realm; and though the precedents look one way or the other, they are to be brought back unto the laws by which the kingdom is governed." He was aware that a pretext might be found to elude most of his precedents. The warrant had commonly declared the party to be charged on *suspicion* of treason or of felony; in which case he would of course be bailed by the court. Yet in some of these instances the words "by the king's special command" were inserted in the commitment; so that they served to repel the pretension of an arbitrary right to supersede the law by his personal authority. Ample proof was brought from the old law-books that the king's command could not excuse an illegal act.

To these pleadings for liberty, Heath, the attorney-general, replied in a speech of considerable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the judges that they were placed there to obey rather than to determine.

The judges behaved during this great cause with appar-

ent moderation and sense of its importance to the subject's freedom. Their decision, however, was in favor of the crown; and the prisoners were remanded to custody. In pronouncing this judgment the chief-justice, sir Nicholas Hyde, avoiding the more extravagant tenets of absolute monarchy, took the narrower line of denying the application of those precedents which had been alleged to show the practice of the court in bailing persons committed by the king's special command. He endeavored also to prove that, where no cause had been expressed in the warrant, except such command as in the present instance, the judges had always remanded the parties; but with so little success, that I can not perceive more than one case mentioned by him, and that above a hundred years old, which supports this doctrine. Every thing that distinguished our constitutional laws, all that rendered the name of England valuable, was at stake in this issue. If the judgment in the case of ship-money was more flagrantly iniquitous, it was not so extensively destructive as the present.

§ 6. Neither these measures, however, of illegal severity toward the uncompliant, backed as they were by a timid court of justice, nor the exhortations of a more prostitute and shameless band of churchmen, could divert the nation from its cardinal point of faith in its own prescriptive franchises. To call another parliament appeared the only practicable means of raising money for a war in which the king persisted with great impolicy, or rather blind trust in his favorite. He consented to this with extreme unwillingness (1628). Previously to its assembling he released a considerable number of gentlemen and others who had been committed for their refusal of the loan. These were in many cases elected to the new parliament, coming thither with just indignation at their country's wrongs, and pardonable resentment of their own. No year, indeed, within the memory of any one living had witnessed such violations of public liberty as 1627. Charles seemed born to carry into daily practice those theories of absolute power which had been promulgated from his father's lips. Even now, while the writs were out for a new parliament, commissioners were appointed to raise money "by impositions or otherwise, as they should find most convenient in a case of such inevitable necessity, wherein form and circumstance must be dispensed with rather than the substance be lost and hazarded;" and the levying of ship-money was already debated in the council. Anticipating, as indeed was natural, that this house of commons would cor-

respond as ill to the king's wishes as their predecessors, his advisers were preparing schemes more congenial, if they could be rendered effective, to the spirit in which he was to govern. A contract was entered into for transporting some troops and a considerable quantity of arms from Flanders into England, under circumstances at least highly suspicious, and which, combined with all the rest that appears of the court policy at that time, leaves no great doubt on the mind that they were designed to keep under the people while the business of contribution was going forward. Shall it be imputed as a reproach to the Cokes, the Seldens, the Glanvils, the Pyms, the Eliots, the Philipses of this famous parliament, that they endeavored to devise more effectual restraints than the law had hitherto imposed on a prince who had snapped like bands of tow the ancient statutes of the land, to remove from his presence councilors to have been misled by whom was his best apology, and to subject him to an entire dependence on his people for the expenditure of government, as the surest pledge of his obedience to the laws?

The principal matters of complaint taken up by the commons in this session were, the exaction of money under the name of loans; the commitment of those who refused compliance, and the late decision of the king's bench, remanding them upon a habeas corpus; the billeting of soldiers on private persons, which had occurred in the last year, whether for convenience or for purposes of intimidation and annoyance; and the commissions to try military offenders by martial law —a procedure necessary within certain limits to the discipline of an army, but unwarranted by the constitution of this country, which was little used to any regular forces, and stretched by the arbitrary spirit of the king's administration beyond all bounds. These four grievances or abuses form the foundation of the PETITION OF RIGHT, presented by the commons in the shape of a declaratory statute. Charles had recourse to many subterfuges in hopes to elude the passing of this law. Even when the bill was tendered to him for that assent, which it had been necessary for the last two centuries that the king should grant or refuse in a word, he returned a long and equivocal answer, from which it could only be collected that he did not intend to remit any portion of what he had claimed as his prerogative. But on an address from both houses for a more explicit answer, he thought fit to consent to the bill in the usual form. The commons, of whose harshness toward Charles his advocates have said so much, immediately passed a bill for granting five subsidies,

about £350,000—a sum not too great for the wealth of the kingdom or for his exigencies, but considerable according to the precedents of former times, to which men naturally look.

Though the king was compelled to accede in general terms to the petition, he had the insincerity to circulate one thousand five hundred copies of it through the country, after the prorogation, with his first answer annexed—an attempt to deceive without the possibility of success.

The Petition of Right, as this statute is still called, from its not being drawn in the common form of an act of parliament, after reciting the various laws which have established certain essential privileges of the subject, and enumerating the violations of them which had recently occurred, in the four points of illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law, prays the king, "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to answer or take such oath, or to give attendance, or be confined or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman in any such manner as is before mentioned be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and marines, and that your people may not be so burdened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatever, to be executed as aforesaid, lest by color of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land."[2]

§ 7. It might not unreasonably be questioned whether the language of this statute were sufficiently general to comprehend duties charged on merchandise at the outports as well as internal taxes and exactions, especially as the former had received a sort of sanction, though justly deemed contrary to law, by the judgment of the court of exchequer in Bates's case. The commons, however, were steadily determined not to desist till they should have rescued their fellow-subjects from a burden as unwarrantably imposed as those specifically enumerated in their Petition of Right. Tonnage and poundage, the customary grant of every reign, had been taken by the present king without consent of parliament; the lords having rejected, as before mentioned, a bill that limited it to

[2] The whole statute is printed at the end of the present chapter.

a single year. The house now prepared a bill to grant it, but purposely delayed its passing, in order to remonstrate with the king against his unconstitutional anticipation of their consent. They conclude, after repeating their declaration that the receiving of tonnage and poundage and other impositions not granted by parliament is a breach of the fundamental liberties of this kingdom, and contrary to the late Petition of Right, with most humbly beseeching his majesty to forbear any further receiving of the same, and not to take it in ill part from those of his loving subjects who should refuse to make payment of any such charges without warrant of law.

The king anticipated the delivery of this remonstrance by proroguing parliament. Tonnage and poundage, he told them, was what he had never meant to give away, nor could possibly do without. By this abrupt prorogation while so great a matter was unsettled, he trod back his late footsteps, and dissipated what little hopes might have arisen from his tardy assent to the Petition of Right. During the interval before the ensuing session, those merchants, among whom Chambers, Rolls, and Vassal are particularly to be remembered with honor, who gallantly refused to comply with the demands of the custom-house, had their goods distrained, and, on suing writs of replevin, were told by the judges that the king's right, having been established in the case of Bates, could no longer be disputed. Thus the commons re-assembled, by no means less inflamed against the king's administration than at the commencement of the preceding session. Their proceedings were conducted with more than usual warmth. Buckingham's death, which had occurred since the prorogation, did not allay their resentment against the advisers of the crown. But the king, who had very much lowered his tone in speaking of tonnage and poundage, and would have been content to receive it as their grant, perceiving that they were bent on a full statutory recognition of the illegality of impositions without their consent, and that they had opened a fresh battery on another side, by mingling in certain religious disputes in order to attack some of his favorite prelates, took the step, to which he was always inclined, of dissolving this third parliament.

§ 8. The religious disputes to which I have just alluded are chiefly to be considered, for the present purpose, in relation to those jealousies and resentments springing out of the ecclesiastical administration, which during the reigns of the first two Stuarts furnished unceasing food to political

discontent. James having early shown his inflexible determination to restrain the puritans, the bishops proceeded with still more rigor than under Elizabeth. No longer thwarted, as in her time, by an unwilling council, they succeeded in exacting a general conformity to the ordinances of the church. It had been solemnly decided by the judges in the queen's reign, and in 1604, that, although the statute establishing the high-commission court did not authorize it to deprive ministers of their benefices, yet, this law being only in affirmation of the queen's inherent supremacy, she might, by virtue of that, regulate all ecclesiastical matters at her pleasure, and erect courts with such powers as she should think fit. Upon this somewhat dangerous principle archbishop Bancroft deprived a considerable number of puritan clergymen; while many more, finding that the interference of the commons in their behalf was not regarded, and that all schemes of evasion were come to an end, were content to submit to the obnoxious discipline. But their affections being very little conciliated by this coercion, there remained a large party within the bosom of the established church prone to watch for and magnify the errors of their spiritual rulers. These men preserved the name of puritans. They naturally fell in with the patriotic party in the house of commons, and kept up throughout the kingdom a distrust of the crown, which has never been so general in England as when connected with some religious apprehensions.

§ 9. The system pursued by Bancroft and his imitators, bishops Neile and Laud, with the approbation of the king, far opposed to the healing counsels of Burleigh and Bacon, was just such as low-born and little-minded men, raised to power by fortune's caprice, are ever found to pursue. They studiously aggravated every difference, and irritated every wound. As the characteristic prejudice of the puritans was so bigoted an abhorrence of the Romish faith that they hardly deemed its followers to deserve the name of Christians, the prevailing high-church party took care to shock that prejudice by somewhat of a retrograde movement, and various seeming, or indeed real, accommodations of their tenets to those of the abjured religion. They began by preaching the divine right, as it is called, or absolute indispensability, of episcopacy; a doctrine of which the first traces, as I apprehend, are found about the end of Elizabeth's reign. They insisted on the necessity of episcopal succession regularly derived from the apostles. They drew an inference from this tenet, that ordinations by presbyters were in all cases

null. And as this affected all the reformed churches in Europe except their own, the Lutherans not having preserved the succession of their bishops, while the Calvinists had altogether abolished that order, they began to speak of them not as brethren of the same faith, united in the same cause, and distinguished only by differences little more material than those of political commonwealths (which had been the language of the church of England ever since the Reformation), but as aliens, to whom they were not at all related, and schismatics, with whom they held no communion; nay, as wanting the very essence of a Christian society. This again brought them nearer, by irresistible consequence, to the disciples of Rome, whom, with becoming charity, but against the received creed of the puritans, and perhaps against their own articles, they all acknowledged to be a part of the catholic church, while they were withholding that appellation, expressly or by inference, from Heidelberg and Geneva.

§ 10. The founders of the English Reformation, after abolishing most of the festivals kept before that time, had made little or no change as to the mode of observance of those they retained. Sundays and holydays stood much on the same footing as days on which no work except for good cause was to be performed, the service of the church was to be attended, and any lawful amusement might be indulged in. A just distinction, however, soon grew up; an industrious people could spare time for very few holydays; and the more scrupulous party, while they slighted the church festivals as of human appointment, prescribed a stricter observance of the Lord's day. But it was not till about 1595 that they began to place it very nearly on the footing of the Jewish Sabbath, interdicting not only the slightest action of worldly business, but even every sort of pastime and recreation; a system which, once promulgated, soon gained ground as suiting their atrabilious humor, and affording a new theme of censure on the vices of the great. Those who opposed them on the high-church side not only derided the extravagance of the Sabbatarians, as the others were called, but pretended that, the commandment having been confined to the Hebrews, the modern observance of the first day of the week as a season of rest and devotion was an ecclesiastical institution, and in no degree more venerable than that of the other festivals or the season of Lent, which the puritans stubbornly despised. Such a controversy might well have been left to the usual weapons. But James I., or some of the bishops to whom he listened, bethought themselves that this might

serve as a test of puritan ministers. He published accordingly a declaration to be read in churches, permitting all lawful recreations on Sunday after divine service, such as dancing, archery, May-games, and morris-dances, and other usual sports; but with a prohibition of bear-baiting, and other unlawful games. No recusant, or any one who had not attended the church service, was entitled to this privilege, which might consequently be regarded as a bounty on devotion. The severe puritan saw it in no such point of view. To his cynical temper May-games and morris-dances were hardly tolerable on six days of the week; they were now recommended for the seventh. And this impious license was to be promulgated in the church itself. It is indeed difficult to explain so unnecessary an insult on the precise clergy but by supposing an intention to harass those who should refuse compliance. But this intention, from whatever cause, perhaps through the influence of archbishop Abbot, was not carried into effect, nor was the declaration itself enforced till the following reign.

The house of commons displayed their attachment to the puritan maxims, or their dislike of the prelatical clergy, by bringing in bills to enforce a greater strictness in this respect. A circumstance that occurred in the session of 1621 will serve to prove their fanatical violence. A bill having been brought in "for the better observance of the Sabbath, usually called Sunday," one Mr. Shepherd, sneering at the puritans, remarked that, as Saturday was dies Sabbati, this might be entitled a bill for the observance of Saturday, commonly called Sunday. This witticism brought on his head the wrath of that dangerous assembly. He was reprimanded on his knees, expelled the house, and when he saw what befell poor Floyd, might deem himself cheaply saved from their fangs with no worse chastisement. Yet when the upper house sent down their bill with "the Lord's day" substituted for "the Sabbath," observing "that people do now much incline to words of Judaism," the commons took no exception. The use of the word Sabbath instead of Sunday became in that age a distinctive mark of the puritan party.

§ 11. A far more permanent controversy sprang up about the end of the same reign, which afforded a new pretext for intolerance, and a fresh source of mutual hatred. Every one of my readers is acquainted more or less with the theological tenets of original sin, free-will, and predestination, variously taught in the schools, and debated by polemical writers for so many centuries; and few can be ignorant that the ar-

ticles of our own church, as they relate to these doctrines, have been very differently interpreted. Those who have no bias to warp their judgment will not perhaps have much hesitation in drawing their line between, though not at an equal distance between, the conflicting parties. It appears, on the one hand, that the articles are worded on some of these doctrines with considerable ambiguity; whether we attribute this to the intrinsic obscurity of the subject, to the additional difficulties with which it has been entangled by theological systems, to discrepancy of opinion in the compilers, or to their solicitude to prevent disunion by adopting formularies which men of different sentiments might subscribe. It is also manifest that their framers came, as it were, with averted eyes to the Augustinian doctrine of predestination, and wisely reprehended those who turned their attention to a system so pregnant with objections, and so dangerous, when needlessly dwelt upon, to all practical piety and virtue. But, on the other hand, this very reluctance to inculcate the tenet is so expressed as to manifest their undoubting belief in it; nor is it possible either to assign a motive for inserting the seventeenth article, or to give any reasonable interpretation to it, upon the theory which at present passes for orthodox in the English church. And upon other subjects intimately related to the former, such as the penalty of original sin and the depravation of human nature, the articles, after making every allowance for want of precision, seem totally irreconcilable with the scheme usually denominated Arminian.

The force of those conclusions, which we must, in my judgment, deduce from the language of these articles, will be materially increased by that appeal to contemporary and other early authorities to which recourse has been had in order to invalidate them. Whatever doubts may be raised as to the Calvinism of Cranmer and Ridley, there can surely be no room for any as to the chiefs of the Anglican church under Elizabeth. We find explicit proofs that Jewel, Nowell, Sandys, Cox, professed to concur with the reformers of Zurich and Geneva in every point of doctrine. The works of Calvin and Bullinger became text-books in the English universities. Those who did not hold the predestinarian theory were branded with reproach by the names of free-willers and Pelagians. And when the opposite tenets came to be advanced, as they were at Cambridge about 1590, a clamor was raised as if some unusual heresy had been broached. Whitgift, with the concurrence of some other prelates, in order to

withstand its progress, published what were called the Lambeth articles, containing the broadest and most repulsive declaration of all the Calvinistic tenets. But, lord Burleigh having shown some disapprobation, these articles never obtained any legal sanction.

These more rigorous tenets, in fact, especially when so crudely announced, were beginning to give way. They had been already abandoned by the Lutheran church. They had long been opposed in that of Rome by the Franciscan order, and latterly by the Jesuits. Above all, the study of the Greek fathers, with whom the first reformers had been little conversant, taught the divines of a more learned age that men of as high a name as Augustin, and whom they were prone to overvalue, had entertained very different sentiments. Still the novel opinions passed for heterodox, and were promulgated with much vacillation and indistinctness. When they were published in unequivocal propositions by Arminius and his school, James declared himself with vehemence against this heresy. He not only sent English divines to sit in the synod of Dort, where the Calvinistic system was fully established, but instigated the proceedings against the remonstrants with more of theological pedantry than charity or decorum. Yet this inconsistent monarch within a very few years was so wrought on by one or two favorite ecclesiastics, who inclined toward the doctrines condemned in that assembly, that openly to maintain the Augustinian system became almost a sure means of exclusion from preferment in our church. This was carried to its height under Charles. Laud, his sole counselor in ecclesiastical matters, advised a declaration enjoining silence on the controverted points; a measure by no means unwise if it had been fairly acted upon. It is alleged, however, that the preachers on one side only were silenced, the printers of books on one side censured in the star-chamber, while full scope was indulged to the opposite sect.

The house of commons, especially in their last session, took up the increase of Arminianism as a public grievance. It was coupled in their remonstrances with popery, as a new danger to religion, hardly less terrible than the former. This bigoted clamor arose in part from the nature of their own Calvinistic tenets, which, being still prevalent in the kingdom, would, independently of all political motives, predominate in any popular assembly. But they had a sort of excuse for it in the close, though accidental and temporary, connection that subsisted between the partisans of these new spec-

ulative tenets and those of arbitrary power; the churchmen who receded most from Calvinism being generally the zealots of prerogative. They conceived also that these theories, conformable in the main to those most countenanced in the church of Rome, might pave the way for that restoration of her faith which from so many other quarters appeared to threaten them. Nor was this last apprehension so destitute of all plausibility as the advocates of the first two Stuarts have always pretended it to be.

§ 12. James, well instructed in the theology of the reformers, and inured himself to controversial dialectics, was far removed in point of opinion from any bias toward the Romish creed. But he had, while in Scotland, given rise to some suspicions at the court of Elizabeth by a little clandestine coquetry with the pope, which he fancied to be a political means of disarming enmity. Some knowledge of this, probably, as well as his avowed dislike of sanguinary persecution, and a foolish reliance on the trifling circumstance that one if not both of his parents had professed their religion, led the English catholics to expect a great deal of indulgence, if not support, at his hands. This hope might receive some encouragement from his speech on opening the parliament of 1604, wherein he intimated his design to revise and explain the penal laws, "which the judges might perhaps," he said, "in times past have too rigorously interpreted." But the temper of those he addressed was very different. The catholics were disappointed by an act inflicting new penalties on recusants, and especially debarring them from educating their children according to their consciences. The administration took a sudden turn toward severity; the prisons were filled, the penalties exacted, several suffered death, and the general helplessness of their condition impelled a few persons (most of whom had belonged to what was called the Spanish party in the last reign) to the gunpowder conspiracy, unjustly imputed to the majority of catholics, though perhaps extending beyond those who appeared in it. We can not wonder that a parliament so narrowly rescued from personal destruction endeavored to draw the cord still tighter round these dangerous enemies. The statute passed on this occasion is by no means more harsh than might be expected. It required not only attendance on worship, but participation in the communion, as a test of conformity, and gave an option to the king of taking a penalty of £20 a month from recusants, or two-thirds of their lands. It prescribed also an oath of allegiance, the refusal of which incurred the penalties

of a præmunire. This imported that, notwithstanding any sentence of deprivation or excommunication by the pope, the taker would bear true allegiance to the king, and defend him against any conspiracies which should be made by reason of such sentence or otherwise, and do his best endeavor to disclose them; that he from his heart abhorred, detested, and abjured as impious and heretical the damnable doctrine and position that princes excommunicated or deprived by the pope may be deposed or murdered by their subjects, or any other whatsoever; and that he did not believe that the pope or any other could absolve him from this oath.

Except by caviling at one or two words, it seemed impossible for the Roman catholics to decline so reasonable a test of loyalty, without justifying the worst suspicions of protestant jealousy. Most of the secular priests in England, asking only a connivance in the exercise of their ministry, and aware how much the good work of reclaiming their apostate countrymen was retarded by the political obloquy they incurred, would have willingly acquiesced in the oath. But the court of Rome, not yet receding an inch from her proudest claims, absolutely forbade all catholics to abjure her deposing power by this test, and employed Bellarmine to prove its unlawfulness. The king stooped to a literary controversy with this redoubted champion, and was prouder of no exploit of his life than his answer to the cardinal's book, by which he incurred the contempt of foreign courts and of all judicious men. Though neither the murderous conspiracy of 1605, nor this refusal to abjure the principles on which it was founded, could dispose James to persecution, or even render the papist so obnoxious in his eyes as the puritan, yet he was long averse to any thing like a general remission of the penal laws.

In the course, however, of that impolitic negotiation, which exposed him to all eyes as the dupe and tool of the court of Madrid, James was led on to promise concessions for which his protestant subjects were ill prepared. That court had wrought on his feeble mind by affected coyness about the infanta's marriage, with two private aims: to secure his neutrality in the war of the Palatinate, and to obtain better terms for the English catholics. On the treaty being almost concluded, the king, prince, and privy council swore to observe certain stipulated articles, by which the infanta was not only to have the exercise of her religion, but the education of her children till ten years of age. But the king was also sworn to private articles: that no penal laws should be

put in force against the catholics, that there should be a perpetual toleration of their religion in private houses, that he and his son would use their authority to make parliament confirm and ratify these articles, and revoke all laws (as it is with strange latitude expressed) containing any thing repugnant to the Roman catholic religion, and that they would not consent to any new laws against them. The prince of Wales separately engaged to procure the suspension or abrogation of the penal laws within three years, and to lengthen the term for the mother's education of their children from ten to twelve years, if it should be in his own power. He promised also to listen to catholic divines whenever the infanta should desire it.

These secret assurances, when they were whispered in England, might not unreasonably excite suspicion of the prince's wavering in his religion, which he contrived to aggravate by an act as imprudent as it was reprehensible. During his stay at Madrid, while his inclinations were still bent on concluding the marriage, the sole apparent obstacle being the pope's delay in forwarding the dispensation, he wrote a letter to Gregory XV., in reply to one received from him, in language evidently intended to give an impression of his favorable dispositions toward the Roman faith. The whole tenor of his subsequent life must have satisfied every reasonable inquirer into our history of Charles's real attachment to the Anglican church; nor could he have had any other aim than to facilitate his arrangements with the court of Rome by this deception. It would perhaps be uncandid to judge severely a want of ingenuousness which youth, love, and bad counsels may extenuate; yet I can not help remarking that the letter is written with the precautions of a veteran in dissimulation; and, while it is full of what might raise expectation, contains no special pledge that he could be called on to redeem. But it was rather presumptuous to hope that he could foil the subtlest masters of artifice with their own weapons.

James, impatient for this ill-omened alliance, lost no time in fulfilling his private stipulations with Spain. He published a general pardon of all penalties already incurred for recusancy. It was designed to follow this up by a proclamation prohibiting the bishops, judges, and other magistrates to execute any penal statute against the catholics. But the lord-keeper, bishop Williams, hesitated at so unpopular a stretch of power. And, the rupture with Spain ensuing almost immediately, the king, with a singular defiance of all

honest men's opinions, though the secret articles of the late treaty had become generally known, declared, in his first speech to parliament in 1624, that "he had only thought good sometimes to wink and connive at the execution of some penal laws, and not to go on so rigorously as at other times, but not to dispense with any, or to forbid or alter any, that concern religion; he never permitted or yielded, he never did think it with his heart, nor spoke it with his mouth."

When James, soon after this, not yet taught by experience to avoid a Romish alliance, demanded the hand of Henrietta Maria for his son, Richelieu thought himself bound by policy and honor as well as religion to obtain the same or greater advantages for the English catholics than had been promised in the former negotiation. Henrietta was to have the education of her children till they reached the age of twelve; thus were added two years, at a time of life when the mind becomes susceptible of lasting impressions, to the term at which, by the treaty with Spain, the mother's superintendence was to cease. Yet there is the strongest reason to believe that this condition was merely inserted for the honor of the French crown, with a secret understanding that it should never be executed. In fact, the royal children were placed at a very early age under protestant governors of the king's appointment; nor does Henrietta appear to have ever insisted on her right. That James and Charles should have incurred the scandal of this engagement, since the articles, though called private, must be expected to transpire, without any real intentions of performing it, is an additional instance of that arrogant contempt of public opinion which distinguished the Stuart family. It was stipulated in the same private articles that prisoners on the score of religion should be set at liberty, and that none should be molested in future. These promises were irregularly fulfilled, according to the terms on which Charles stood with his brother-in-law. Sometimes general orders were issued to suspend all penal laws against papists; again, by capricious change of policy, all officers and judges are directed to proceed in their execution; and this severity gave place in its turn to a renewed season of indulgence. If these alternations were not very satisfactory to the catholics, the whole scheme of lenity displeased and alarmed the protestants. Tolerance, in any extensive sense, of that proscribed worship, was equally abhorrent to the prelatist and the puritan; though one would have winked at its peaceable and domestic exercise, which the oth-

er was zealous to eradicate. But, had they been capable of more liberal reasoning upon this subject, there was enough to justify their indignation at this attempt to sweep away the restrictive code established by so many statutes, and so long deemed essential to the security of their church, by an unconstitutional exertion of the prerogative, prompted by no more worthy motive than compliance with a foreign power, and tending to confirm suspicions of the king's wavering between the two religions, or his indifference to either. In the very first months of his reign, and while that parliament was sitting which has been reproached for its parsimony, he sent a fleet to assist the French king in blocking up the port of Rochelle; and, with utter disregard of the national honor, ordered the admiral, who reported that the sailors would not fight against protestants, to sail to Dieppe, and give up his ships into the possession of France. His subsequent alliance with the Huguenot party in consequence merely of Buckingham's unwarrantable hostility to France, founded on the most extraordinary motives, could not redeem, in the eyes of the nation, this instance of lukewarmness, to say the least, in the general cause of the Reformation.

§ 13. It was neither, however, the Arminian opinions of the higher clergy, nor even their supposed leaning toward those of Rome, that chiefly rendered them obnoxious to the commons. They had studiously inculcated that resistance to the commands of rulers was in every conceivable instance a heinous sin; a tenet so evidently subversive of all civil liberty, that it can be little worth while to argue about right and privilege, wherever it has obtained a real hold on the understanding and conscience of a nation. This had very early been adopted by the Anglican reformers, as a barrier against the disaffection of those who adhered to the ancient religion, and in order to exhibit their own loyalty in a more favorable light. The homily against willful disobedience and rebellion was written on occasion of the rising of the northern earls in 1569, and is full of temporary and even personal allusions. But the same doctrine is enforced in others of those compositions, which enjoyed a kind of half authority in the English church. It is laid down in the canons of convocation in 1606. It is very frequent in the writings of English divines, those especially who were much about the court. And an unlucky preacher at Oxford, named Knight, about 1622, having thrown out some intimation that subjects oppressed by their prince on account of religion might defend themselves by arms, that university, on the king's highly resenting such

heresy, not only censured the preacher (who had the audacity to observe that the king by then sending aid to the French Huguenots of Rochelle, as was rumored to be designed, had sanctioned his position), but pronounced a solemn decree that it is in no case lawful for subjects to make use of force against their princes, nor to appear offensively or defensively in the field against them. All persons promoted to degrees were to subscribe this article, and to take an oath that they not only at present detested the opposite opinion, but would at no future time entertain it.

Those, however, who most strenuously denied the abstract right of resistance to unlawful commands were by no means obliged to maintain the duty of yielding them an active obedience. In the case of religion, it was necessary to admit that God was rather to be obeyed than man. Nor had it been pretended, except by the most servile churchmen, that subjects had no positive rights, in behalf of which they might decline compliance with illegal requisitions. This, however, was openly asserted in the reign of Charles. Those who refused the general loan of 1626 had to encounter assaults from very different quarters, and were not only imprisoned, but preached at. Two sermons by Sibthorp and Mainwaring excited particular attention. These men, eager for preferment, which they knew the readiest method to attain, taught that the king might take the subject's money at his pleasure, and that no one might refuse his demand, on penalty of damnation. "Parliaments," said Mainwaring, "were not ordained to contribute any right to the king, but for the more equal imposing and more easy exacting of that which unto kings doth appertain by natural and original law and justice, as their proper inheritance annexed to their imperial crowns from their birth." These extravagances of rather obscure men would have passed with less notice if the government had not given them the most indecent encouragement. Abbot, archbishop of Canterbury, a man of integrity, but upon that account, as well as for his Calvinistic partialities, long since obnoxious to the courtiers, refused to license Sibthorp's sermon, alleging some unwarrantable passages which it contained. For no other cause than this, he was sequestered from the exercise of his archiepiscopal jurisdiction, and confined to a country house in Kent. The house of commons, after many complaints of those ecclesiastics, finally proceeded against Mainwaring by impeachment at the bar of the lords. He was condemned to pay a fine of £1000, to be suspended for three years from his ministry, and

to be incapable of holding any ecclesiastical dignity. Yet the king almost immediately pardoned Mainwaring, who became in a few years a bishop, as Sibthorp was promoted to an inferior dignity.

§ 14. There seems on the whole to be very little ground for censure in the proceedings of this illustrious parliament. I admit that, if we believe Charles I. to have been a gentle and beneficent monarch, incapable of harboring any design against the liberties of his people, or those who stood forward in defense of their privileges, wise in the choice of his counselors, and patient in listening to them, the commons may seem to have carried their opposition to an unreasonable length. But, if he had shown himself possessed with such notions of his own prerogative, no matter how derived, as could bear no effective control from fixed law, or from the nation's representatives; if he was hasty and violent in temper, yet stooping to low arts of equivocation and insincerity; whatever might be his estimable qualities in other respects, they could act, in the main, no otherwise than by endeavoring to keep him in the power of parliament, lest his power should make parliament but a name. Every popular assembly, truly zealous in a great cause, will display more heat and passion than cool-blooded men after the lapse of centuries may wholly approve. But so far were they from encroaching, as our Tory writers pretend, on the just powers of a limited monarch, that they do not appear to have conceived, they at least never hinted at, the securities without which all they had obtained or attempted would become ineffectual. No one member of that house, in the utmost warmth of debate, is recorded to have suggested the abolition of the court of star-chamber, or any provision for the periodical meeting of parliament. Though such remedies for the greatest abuses were in reality consonant to the actual unrepealed law of the land, yet, as they implied, in the apprehension of the generality, a retrenchment of the king's prerogative, they had not yet become familiar to their hopes. In asserting the illegality of arbitrary detention, of compulsory loans, of tonnage and poundage levied without consent of parliament, they stood in defense of positive rights won by their fathers, the prescriptive inheritance of Englishmen. Twelve years more of repeated aggressions taught the Long Parliament what a few sagacious men might perhaps have already suspected, that they must recover more of their ancient constitution from oblivion, that they must sustain its partial weakness by new securities, that, in order to render

the existence of monarchy compatible with that of freedom, they must not only strip it of all it had usurped, but of something that was its own.

NOTE TO CHAPTER VII.

PETITION OF RIGHT.

3 Car. I., c. 1.

The petition exhibited to his majesty by the lords spiritual and temporal, and commons, in this parliament assembled, concerning divers rights and liberties of the subjects, with the king's majesty's royal answer thereunto in full parliament.

To the King's Most Excellent Majesty.

Humbly show unto our sovereign lord the king, the lords spiritual and temporal, and commons, in parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of king Edward I., commonly called *Statutum de tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good-will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of king Edward III. it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and others the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give utterance before your privy council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lords-lieutenants, deputy-lieutenants, commissioners for musters, justices of peace, and others, by command or direction from your majesty, or your privy council, against the laws and free customs of the realm.

III. And whereas also by the statute called "The Great Charter of the Liberties of England," it is declared and enacted, that no freeman may be taken or imprisoned, or to be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of king Edward III. it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to the law.

VI. And whereas of late great compa-

nies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII. And whereas also by authority of parliament, in the five and-twentieth year of the reign of king Edward III., it is declared and enacted, that no man should be forejudged of life or limb against the form of the Great Charter, and the law of the land; and by the said Great Charter, and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or foreborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or to take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof: and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent majesty as their rights and liberties, according to the laws and statutes of this realm; and that your majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your majesty, and the prosperity of this kingdom.

Quâ quidem petitione lectâ et plenius intellectâ per dictum dominum regem taliter est responsum in pleno parliamento, viz. Soit droit fait comme est desiré.

CHAPTER VIII.

FROM THE DISSOLUTION OF CHARLES'S THIRD PARLIAMENT TO THE MEETING OF THE LONG PARLIAMENT.

§ 1. Declaration of the King after the Dissolution. § 2. Prosecutions of Eliot and others for Conduct in Parliament. § 3. Of Chambers for refusing to pay Customs. § 4. Commendable Behavior of Judges in some instances. § 5. Means adopted to raise the Revenue. Compositions for Knighthood. § 6. Forest laws. § 7. Monopolies. § 8. Ship-money. § 9. Extension of it to inland Places. § 10. Hampden's Refusal to pay. Arguments on the Case. § 11. Proclamations. Various arbitrary Proceedings. § 12. Star-Chamber Jurisdiction. § 13. Punishments inflicted by it. Cases of Bishop Williams, Prynne, etc. § 14. Laud—his Character. § 15. Lord Strafford. § 16. Correspondence between these two. § 17. Conduct of Laud in the Church-Prosecution of Puritans. § 18. Favor shown to Catholics. Tendency to their Religion. Expectations entertained by them. § 19. Mission of Panzani. Intrigue of Bishop Montagu with him. § 20. Apprehensions of the Primate. § 21. Chillingworth. § 22. Hales. § 23. Character of Clarendon's Writings. Animadversions on his Account of this Period. § 24. Scots Troubles, and Distress of the Government. § 25. Parliament of April, 1640. § 26. Council of York. § 27. Convocation of Long Parliament.

§ 1. THE dissolution of a parliament was always to the prerogative what the dispersion of clouds is to the sun. As if in mockery of the transient obstruction, it shone forth as splendid and scorching as before. Even after the exertions of the most popular and intrepid house of commons that had ever met, and after the most important statute that had been passed for some hundred years, Charles found himself in an instant unshackled by his law or his word; once more that absolute king for whom his sycophants had preached and pleaded, as if awakened from a fearful dream of sounds and sights that such monarchs hate to endure, to the full enjoyment of an unrestrained prerogative. He announced his intentions of government for the future in a long declaration of the causes of the late dissolution of parliament, which, though not without the usual promises to maintain the laws and liberties of the people, gave evident hints that his own interpretation of them must be humbly acquiesced in.

§ 2. The king next turned his mind, according to his own and his father's practice, to take vengeance on those who had been most active in their opposition to him. A few days after the dissolution, sir John Eliot, Holles, Selden, Long, Strode, and other eminent members of the commons, were committed, some to the Tower, some to the king's bench, and their papers seized. Upon suing for their habeas

corpus, a return was made that they were detained for notable contempts, and for stirring up sedition, alleged in a warrant under the king's sign-manual. Their counsel argued against the sufficiency of this return, as well on the principles and precedents employed in the former case of sir Thomas Darnel and his colleagues, as on the late explicit confirmation of them in the Petition of Right. The king's counsel endeavored, by evading the authority of that enactment, to set up anew that alarming pretense to a power of arbitrary imprisonment which the late parliament had meant to silence forever. "A petition in parliament," said the attorney-general Heath, "is no law, yet it is for the honor and dignity of the king to observe it faithfully; but it is the duty of the people not to stretch it beyond the words and intention of the king. And no other construction can be made of the petition than that it is a confirmation of the ancient liberties and rights of the subjects. So that now the case remains in the same quality and degree as it was before the petition." Thus, by dint of a sophism which turned into ridicule the whole proceedings of the late parliament, he pretended to recite afresh the authorities on which he had formerly relied, in order to prove that one committed by the command of the king or privy council is not bailable. The judges, timid and servile, yet desirous to keep some measures with their own consciences, or looking forward to the wrath of future parliaments, wrote what Whitelock calls "a humble and stout letter" to the king, that they were bound to bail the prisoners; but requested that he would send his direction to do so. The gentlemen in custody were, on this intimation, removed to the Tower; and the king, in a letter to the court, refused permission for them to appear on the day when judgment was to be given. Their restraint was thus protracted through the long vacation; toward the close of which, Charles, sending for two of the judges, told them he was content the prisoners should be bailed, notwithstanding their obstinacy in refusing to present a petition declaring their sorrow for having offended him. In the ensuing Michaelmas term, accordingly, they were brought before the court, and ordered not only to find bail for the present charge, but sureties for their good behavior. On refusing to comply with this requisition, they were remanded to custody.

The attorney-general, dropping the charge against the rest, exhibited an information against sir John Eliot for words uttered in the house; namely, that the council and judges had conspired to trample under foot the liberties of the sub-

ject; and against Mr. Denzil Holles and Mr. Valentine for a tumult on the last day of the session; when the speaker, having attempted to adjourn the house by the king's command, had been forcibly held down in the chair by some of the members while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offenses were supposed to be committed in parliament, and consequently not punishable in any other place. This brought forward the great question of privilege, on the determination of which the power of the house of commons, and consequently the character of the English constitution, seemed evidently to depend.

Freedom of speech, being implied in the nature of a representative assembly called to present grievances and suggest remedies, could not stand in need of any special law or privilege to support it. But it was also sanctioned by positive authority. The speaker demands it at the beginning of every parliament among the standing privileges of the house; and it had received a sort of confirmation from the legislature by an act passed in the fourth year of Henry VIII., on occasion of one Strode, who had been prosecuted and imprisoned in the Stannary court, for proposing in parliament some regulations for the tinners in Cornwall; which annuls all that had been done, or might hereafter be done, toward Strode, for any matter relating to the parliament, in words so strong as to form, in the opinion of many lawyers, a general enactment. The judges however held, on the question being privately sent to them by the king, that the statute concerning Strode was a particular act of parliament extending only to him and those who had joined with him to prefer a bill to the commons concerning tinners; but that, although the act were private and extended to them alone, yet it was no more than all other parliament-men, by privilege of the house, ought to have; namely, freedom of speech concerning matters there debated.

It appeared by a constant series of precedents, the counsel for Eliot and his friends argued, that the liberties and privileges of parliament could only be determined therein, and not by any inferior court; that the judges had often declined to give their opinions on such subjects, alleging that they were beyond their jurisdiction; that the words imputed to Eliot were in the nature of an accusation of persons in power which the commons had an undoubted right to prefer; that no one would venture to complain of grievances in parliament, if he should be subjected to punishment at the dis-

cretion of an inferior tribunal; that whatever instances had occurred of punishing the alleged offenses of members after a dissolution were but acts of power, which no attempt had hitherto been made to sanction; finally, that the offenses imputed might be punished in a future parliament.

The court were unanimous in holding that they had jurisdiction, though the alleged offenses were committed in parliament, and that the defendants were bound to answer. The privileges of parliament did not extend, one of them said, to breaches of the peace, which was the present case; and all offenses against the crown, said another, were punishable in the court of king's bench. On the parties refusing to put in any other plea, judgment was given that they should be imprisoned during the king's pleasure, and not released without giving surety for good behavior, and making submission; that Eliot, as the greatest offender and ringleader, should be fined in £2000, Holles and Valentine to a smaller amount.

Eliot, the most distinguished leader of the popular party, died in the Tower without yielding to the submission required. In the long parliament the commons came to several votes on the illegality of all these proceedings, both as to the delay in granting their habeas corpus, and the overruling their plea to the jurisdiction of the king's bench. But the subject was revived again in a more distant and more tranquil period. In the year 1667 the commons resolved that the act of 4 H. VIII. concerning Strode was a general law, "extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament." They resolved also that the judgment given 5 Car. I. against sir John Eliot, Denzil Holles, and Benjamin Valentine, is an illegal judgment, and against the freedom and privilege of parliament. To these resolutions the lords gave their concurrence. And Holles, then become a peer, having brought the record of the king's bench by writ of error before them, they solemnly reversed the judgment. An important decision with respect to our constitutional law, which has established beyond controversy the great privilege of unlimited freedom of speech in parliament; unlimited, I mean, by any authority except that by which the house itself ought always to restrain indecent and disorderly language in its members. It does not, however, appear to be a necessary consequence, from the re-

versal of this judgment, that no actions committed in the house by any of its members are punishable in a court of law. The argument in behalf of Holles and Valentine goes, indeed, to this length; but it was admitted in the debate on the subject in 1667 that their plea to the jurisdiction of the king's bench could not have been supported as to the imputed riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in parliament. And it is obvious that the house could inflict no adequate punishment in the possible case of treason or felony committed within its walls; nor, if its power of imprisonment be limited to the session, in that of many smaller offenses.

§ 3. The customs on imported merchandises were now rigorously enforced. But the late discussions in parliament, and the growing disposition to probe the legality of all acts of the crown, rendered the merchants more discontented than ever. Richard Chambers, having refused to pay any further duty for a bale of silk than might be required by law, was summoned before the privy council. In the presence of that board he was provoked to exclaim that in no part of the world, not even in Turkey, were the merchants so screwed and wrung as in England. For these hasty words an information was preferred against him in the star-chamber; and the court, being of opinion that the words were intended to make the people believe that his majesty's happy government might be termed Turkish tyranny, manifested their laudable abhorrence of such tyranny by sentencing him to pay a fine of £2000, and to make a humble submission. Chambers, a sturdy puritan, absolutely refused to subscribe the form of submission tendered to him, and was of course committed to prison. But the court of king's bench admitted him to bail on a habeas corpus; for which, as Whitelock tells us, they were reprimanded by the council.

§ 4. There were several instances, besides this just mentioned, wherein the judges manifested a more courageous spirit than they were able constantly to preserve; and the odium under which their memory labors for a servile compliance with the court, especially in the case of ship-money, renders it but an act of justice to record those testimonies they occasionally gave of a nobler sense of duty. They unanimously declared, when Charles expressed a desire that Felton, the assassin of the duke of Buckingham, might be put to the rack in order to make him discover his accomplices, that the law of England did not allow the use of tor-

ture. This is a remarkable proof that, amidst all the arbitrary principles and arbitrary measures of the time, a truer sense of the inviolability of law had begun to prevail, and that the free constitution of England was working off the impurities with which violence had stained it. For, though it be most certain that the law never recognized the use of torture, there had been many instances of its employment, and even within a few years. They declared about the same time, on a reference to them concerning certain disrespectful words alleged to have been spoken by one Pine against the king, that no words can of themselves amount to treason within the statute of Edward III.[1]

§ 5. In pursuance of the system adopted by Charles's ministers, they had recourse to exactions, some odious and obsolete, some of very questionable legality, and others clearly against law. Of the former class may be reckoned the compositions for not taking the order of knighthood. The early kings of England, Henry III. and Edward I., very little in the spirit of chivalry, had introduced the practice of summoning their military tenants, holding £20 per annum, to receive knighthood at their hands. Those who declined this honor were permitted to redeem their absence by a moderate fine. Elizabeth, once in her reign, and James, had availed themselves of this ancient right. But the change in the value of money rendered it far more oppressive than formerly, though limited to the holders of £40 per annum in military tenure. Commissioners were now appointed to compound with those who had neglected some years before to obey the proclamation, summoning them to receive knighthood at the king's coronation. In particular instances very severe fines are recorded to have been imposed upon defaulters, probably from some political resentment.

§ 6. Still greater dissatisfaction attended the king's attempt to revive the ancient laws of the forests—those laws, of which, in elder times, so many complaints had been heard, exacting money by means of pretensions which long disuse had rendered dubious, and showing himself to those who lived on the borders of those domains in the hateful light of a litigious and encroaching neighbor. The earl of Holland held a court almost every year, as chief-justice in eyre, for the recovery of the king's forestall rights, which made great havoc with private property. No prescription could be plead-

[1] This was a very important determination, and put an end to such tyrannical persecution of Roman Catholics for bare expressions of opinion as had been used under Elizabeth and James.

ed against the king's title, which was to be found, indeed, by the inquest of a jury, but under the direction of a very partial tribunal. The royal forests in Essex were so enlarged that they were hyperbolically said to include the whole county. The earl of Southampton was nearly ruined by a decision that stripped him of his estate near the New Forest. The boundaries of Rockingham forest were increased from six miles to sixty, and enormous fines imposed on the trespassers; lord Salisbury being amerced in £20,000, lord Westmoreland in £19,000, sir Christopher Hatton in £12,000.[2] It is probable that a part of these was remitted.

§ 7. A greater profit was derived from a still more pernicious and indefensible measure, the establishment of a chartered company with exclusive privileges of making soap. The recent statute against monopolies seemed to secure the public against this species of grievance. Noy, however, the attorney-general, a lawyer of uncommon eminence, and lately a strenuous asserter of popular rights in the house of commons, devised this project, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay eight pounds for every ton of soap made, as well as £10,000 for their charter. For this they were empowered to appoint searchers, and exercise a sort of inquisition over the trade. Those dealers who resisted their interference were severely fined on informations in the star-chamber.

This precedent was followed in the erection of a similar company of starch-makers, and in a great variety of other grants, till monopolies, in transgression or evasion of the late statute, became as common as they had been under James or Elizabeth. The king, by a proclamation at York, in 1639, beginning to feel the necessity of diminishing the public odium, revoked all these grants. He annulled at the same time a number of commissions that had been issued in order to obtain money by compounding with offenders against penal statutes.

§ 8. The name of Noy has acquired an unhappy celebrity by a far more famous invention, which promised to realize the most sanguine hopes that could have been formed of carrying on the government for an indefinite length of time

[2] It is well known that Charles made Richmond Park by means of depriving many proprietors not only of common rights, but of their freehold lands. It is not clear that they were ever compensated; but I think this probable, as the matter excited no great clamor in the long parliament.

without the assistance of parliament. Shaking off the dust of ages from parchments in the Tower, this man of venal diligence and prostituted learning discovered that the sea-ports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay, there were instances of a similar demand upon some inland places. Noy himself died almost immediately afterward. The first writ issued from the council in October, 1634. It was directed to the magistrates of London and other sea-port towns. Reciting the depredations lately committed by pirates, and slightly adverting to the dangers imminent in a season of general war on the continent, it enjoins them to provide a certain number of ships of war of a prescribed tonnage and equipage; empowering them also to assess all the inhabitants for a contribution toward this armament according to their substance. The citizens of London humbly remonstrated that they conceived themselves exempt, by sundry charters and acts of parliament, from bearing such a charge. But the council peremptorily compelled their submission, and the murmurs of inferior towns were still more easily suppressed. This is said to have cost the city of London £35,000.

§ 9. The desire of being at least prepared for war, as well as the general system of stretching the prerogative beyond all limits, suggested an extension of the former writs from the sea-ports to the whole kingdom. Finch, chief-justice of the common pleas, has the honor of this improvement on Noy's scheme. He was a man of little learning or respectability, a servile tool of the despotic cabal; who, as speaker of the last parliament, had, in obedience to a command from the king to adjourn, refused to put the question upon a remonstrance moved in the house. By the new writs for ship-money, properly so denominated, since the former had only demanded the actual equipment of vessels, for which inland counties were of course obliged to compound, the sheriffs were directed to assess every land-holder and other inhabitant, according to their judgment of his means, and to enforce the payment by distress.

This extraordinary demand startled even those who had hitherto sided with the court. The ministers prudently resolved to secure not the law, but its interpreters, on their side. They published an extra-judicial opinion of the twelve judges, taken at the king's special command, according to the pernicious custom of that age. The judges gave it as their unanimous opinion that, "when the good and safety of

the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time, as he should think fit, for the defense and safeguard of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole judge both of the danger, and when and how the same was to be prevented and avoided."

This premature declaration of the judges, which was publicly read by the lord-keeper Coventry in the star-chamber, did not prevent a few intrepid persons from bringing the question solemnly before them, that the liberties of their country might at least not perish silently. The first that resisted was the gallant Richard Chambers, who brought an action against the lord-mayor for imprisoning him on account of his refusal to pay his assessment on the former writ. The magistrate pleaded the writ as a special justification; when Berkley, one of the judges of the king's bench, declared that there was a rule of law and a rule of government, that many things which could not be done by the first rule might be done by the other, and would not suffer counsel to argue against the lawfulness of ship-money. The next were lord Say and Mr. Hampden, both of whom appealed to the justice of their country; but the famous decision which has made the latter so illustrious put an end to all attempts at obtaining redress by course of law.

§ 10. Hampden was a gentleman of good estate in Buckinghamshire, whose assessment to the contribution for ship-money demanded from his county amounted only to twenty shillings.[3] The cause, though properly belonging to the court of exchequer, was heard, on account of its magnitude, before all the judges in the exchequer-chamber. The precise question, so far as related to Mr. Hampden, was, Whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defense of the kingdom? It was argued by St. John and Holborne in behalf of Hampden; by the solicitor-general Littleton and the attorney-general Banks for the crown.

Passing slightly over the charter of the Conqueror, that his subjects shall hold their lands free from all unjust tal-

[3] The suit in the exchequer was due for property situate in the parish of Stoke Mandevile. This explains the smallness of the sum immediately in question; it was assessed only on a portion of Hampden's lands.

lage, and the clause in John's Magna Charta, that no aid or scutage should be assessed but by consent of the great council (a provision not repeated in that of Henry III.), the advocates of Hampden relied on the 25 E. I., commonly called the Confirmatio Chartarum, which forever abrogated all taxation without consent of parliament; and this statute itself they endeavored to prove was grounded on requisitions very like the present, for the custody of the sea which Edward had issued the year before. Hence it was evident that the saving contained in that act for the accustomed aids and prizes could not possibly be intended, as the opposite counsel would suggest, to preserve such exactions as ship-money, but related to the established feudal aids, and to the ancient customs on merchandise. They dwelt less, however (probably through fear of having this exception turned against them), on this important statute than on one of more celebrity, but of very equivocal genuineness, denominated De Tallagio non Concedendo, which is nearly in the same words as the Confirmatio Chartarum, with the omission of the abovementioned saving. More than one law enacted under Edward III. re-asserts the necessity of parliamentary consent to taxation. It was indeed the subject of frequent remonstrance in that reign, and the king often infringed this right. But the perseverance of the commons was successful, and ultimately rendered the practice conformable to the law. In the second year of Richard II., the realm being in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out of parliament, advising that one should be speedily summoned. This precedent was the more important as it tended to obviate that argument from peril and necessity on which the defenders of ship-money were wont to reply. But they met that specious plea more directly. They admitted that a paramount overruling necessity silences the voice of law; that in actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; that not only the sovereign, but each man in respect of his neighbor, might do many things absolutely illegal at other seasons; and this served to distinguish the present case from some strong acts of prerogative exerted by Elizabeth in 1588, when the liberties and religion of the people were in the most apparent jeopardy. But here there was no overwhelm-

ing danger; the nation was at peace with all the world; could the piracies of Turkish corsairs, or even the insolence of rival neighbors, be reckoned among those instant perils for which a parliament would provide too late?

Lastly, the Petition of Right, that noble legacy of a slandered parliament, reciting and confirming the ancient statutes, had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament. This latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of ship-money.

The king's counsel, in answer to these arguments, appealed to that series of records which the diligence of Noy had collected. By far the greater part of these were commissions of array. But several, even of those addressed to inland towns (and, if there were no service by tenure in the case, it does not seem easy to distinguish these in principle from counties), bore a very strong analogy to the present. They were, however, in early times. No sufficient answer could be offered to the statutes that had prohibited unparliamentary taxation. The attempts made to elude their force were utterly ineffectual, as those who are acquainted with their emphatic language may well conceive. But the council of Charles I., and the hirelings who ate their bread, disdained to rest their claim of ship-money on obscure records, or on cavils about the meaning of statutes. They resorted rather to the favorite topic of the times, the intrinsic, absolute authority of the king. This the attorney-general Banks placed in the very front of his argument. "This power," says he, "is innate in the person of an absolute king, and in the persons of the kings of England. * * * For the king of England he is an absolute monarch; nothing can be given to an absolute prince but what is inherent in his person. He can do no wrong. He is the sole judge, and we ought not to question him. Where the law trusts we ought not to distrust. The acts of parliament," he observed, "contained no express words to take away so high a prerogative; and the king's prerogative, even in lesser matters, is always saved wherever express words do not restrain it."

Seven of the twelve judges, namely, Finch, chief-justice of the common pleas, Jones, Berkley, Vernon, Crawley, Trevor, and Weston, gave judgment for the crown. Brampston, chief-justice of the king's bench, and Davenport, chief baron

of the exchequer, pronounced for Hampden, but on technical reasons, and adhering to the majority on the principal question. Denham, another judge of the same court, being extremely ill, gave a short written judgment in favor of Hampden. But justices Croke and Hutton, men of considerable reputation and experience, displayed a most praiseworthy intrepidity in denying, without the smallest qualification, the alleged prerogative of the crown and the lawfulness of the writ for ship-money. They had unfortunately signed, along with the other judges, the above-mentioned opinion in favor of the right. For this they made the best apology they could, that their voice was concluded by the majority. But in truth it was the ultimate success that sometimes attends a struggle between conscience and self-interest or timidity.

The length to which this important cause was protracted, six months having elapsed from the opening speech of Mr. Hampden's counsel to the final judgment, was of infinite disservice to the crown. During this long period every man's attention was directed to the exchequer-chamber. The convincing arguments of St. John and Holborne, but still more the division on the bench, increased their natural repugnance to so unusual and dangerous a prerogative. It was manifest by the whole strain of the court lawyers that no limitations on the king's authority could exist but by the king's sufferance. This alarming tenet, long bruited among the churchmen and courtiers, now resounded in the halls of justice. But ship-money, in consequence, was paid with far less regularity and more reluctance than before. Whether in consequence of this unwillingness, or for other reasons, the revenue levied in different years under the head of ship-money is more fluctuating than we should expect from a fixed assessment, but may be reckoned at an average sum of £200,000.

§ 11. The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, prohibiting or putting under restraint the importation of various articles, and the home growth of others, or establishing regulations for manufactures. Prices of several minor articles were fixed by proclamation; and in one instance this was extended to poultry, butter, and coals. The king declares by a proclamation that he had incorporated all tradesmen and artificers within London and three miles round; so that no person might set up any trade without having served a seven years' apprenticeship, and without admission into such corporation. He prohibits, in like manner, any one from using the trade

of a maltster or that of a brewer without admission into the corporations of maltsters and brewers erected for every county. I know not whether these projects were in any degree founded on the alleged pretext of correcting abuses, or were solely designed to raise money by means of these corporations. The illegality of these proclamations is most unquestionable.

The rapid increase of London continued to disquiet the court. It was the stronghold of political and religious disaffection. Hence the prohibitions of erecting new houses, which had begun under Elizabeth, were continually repeated.

The security of freehold rights had been the peculiar boast of the English law. The freeholder was recognized as the liber homo of Magna Charta, who could not be disseized of his tenements and franchises. His house was his castle, which the law respected, and which the king dared not enter. Even the public good must give way to his obstinacy; nor had the legislature itself as yet compelled any man to part with his lands for a compensation which he was loath to accept. The council and star-chamber had very rarely presumed to meddle with his right; never perhaps where it was acknowledged and ancient. But now this reverence of the common law for the sacredness of real property was derided by those who revered nothing as sacred but the interests of the church and crown. The privy council, on a suggestion that the demolition of some houses and shops in the vicinity of St. Paul's would show the cathedral to more advantage, directed that the owners should receive such satisfaction as should seem reasonable; or, on their refusal, the sheriff was required to see the buildings pulled down, "it not being thought fit the obstinacy of those persons should hinder so considerable a work."

In the great plantation of Ulster by James, the city of London had received a grant of extensive lands in the county of Derry, on certain conditions prescribed in their charter. The settlement became flourishing, and enriched the city. But the wealth of London was always invidious to the crown, as well as to the needy courtiers. On an information filed in the star-chamber for certain alleged breaches of their charter, it was not only adjudged to be forfeited to the king, but a fine of £70,000 was imposed on the city. They paid this enormous mulct; but were kept out of their lands till restored by the long parliament.

The levies of tonnage and poundage without authority of parliament, the exaction of monopolies, the extension of the

forests, the arbitrary restraints of proclamations, above all the general exaction of ship-money, form the principal articles of charge against the government of Charles, so far as relates to its inroads on the subject's property. These were maintained by a vigilant and unsparing exercise of jurisdiction in the court of star-chamber. I have, in another chapter, traced the revival of this great tribunal, probably under Henry VIII., in at least as formidable a shape as before the now-neglected statutes of Edward III. and Richard II., which had placed barriers in its way. (See pp. 37–39.)

§ 12. The records show the star-chamber to have taken cognizance both of civil suits and of offenses throughout the time of the Tudors. But from the early part of Elizabeth's reign the star-chamber took a direct cognizance of any civil suits less frequently than before; partly, I suppose, from the increased business of the court of chancery and the admiralty court, which took away much wherein they had been wont to meddle; partly from their own occupation as a court of criminal judicature, which became more conspicuous as the other went into disuse. This criminal jurisdiction is that which rendered the star-chamber so potent and so odious an auxiliary of a despotic administration.

The offenses principally cognizable in this court were forgery, perjury, riot, maintenance, fraud, libel, and conspiracy. But besides these, every misdemeanor came within the proper scope of its inquiry; those especially of public importance, and for which the law, as then understood, had provided no sufficient punishment. For the judges interpreted the law in early times with too great narrowness and timidity; defects which, on the one hand, raised up the overruling authority of the court of chancery, as the necessary means of redress to the civil suitor who found the gates of justice barred against him by technical pedantry; and, on the other, brought this usurpation and tyranny of the star-chamber upon the kingdom by an absurd scrupulosity about punishing manifest offenses against the public good. Thus, corruption, breach of trust, and malfeasance in public affairs, or attempts to commit felony, seem to have been reckoned not indictable at common law, and came in consequence under the cognizance of the star-chamber. In other cases its jurisdiction was merely concurrent; but the greater certainty of conviction, and the greater severity of punishment, rendered it incomparably more formidable than the ordinary benches of justice. The law of libel grew up in this unwholesome atmosphere, and was molded by the plastic hands of suc-

cessive judges and attorneys-general. Prosecution of this kind, according to Hudson, began to be more frequent from the last years of Elizabeth, when Coke was attorney-general; and it is easy to conjecture what kind of interpretation they received. To hear a libel sung or read, says that writer, and to laugh at it, and make merriment with it, has ever been held a publication in law. The gross error that it is not a libel if it be true, has long since, he adds, been exploded out of this court.[4]

Among the exertions of authority practiced in the star-chamber which no positive law could be brought to warrant, he enumerates "punishments of breach of proclamations before they have the strength of an act of parliament; which this court hath stretched as far as ever any act of parliament did."

The mode of process was sometimes of a summary nature; the accused person being privately examined, and his examination read in the court, if he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or, in certain cases, of a private relator. The party was brought before the court by writ of subpœna; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to the matters contained in the information as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. The course of proceeding, on the whole, seems to have nearly resembled that of the chancery.

§ 13. It was held competent for the court to adjudge any punishment short of death. Fine and imprisonment were of course the most usual. The pillory, whipping, branding, and cutting off the ears, grew into use by degrees. It would be difficult to find precedents for the aggravated cruelties inflicted on Leighton, Lilburne, and others; but instances of cutting off the ears may be found under Elizabeth. The reproach, therefore, of arbitrary and illegal jurisdiction does not wholly fall on the government of Charles. They found themselves in possession of this almost unlimited authority. But doubtless, as far as the history of proceedings in the star-chamber are recorded, they seem much more numerous and violent in the present reign than in the two preceding.

[4] Hudson's Treatise of the Court of Star-Chamber, written about the end of James's reign.

The object of drawing so large a number of criminal cases into the star-chamber seems to have been twofold: first, to inure men's minds to an authority more immediately connected with the crown than the ordinary courts of law, and less tied down to any rules of pleading or evidence; secondly, to eke out a scanty revenue by penalties and forfeitures. Absolutely regardless of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means, the councilors of the star-chamber inflicted such fines as no court of justice, even in the present reduced value of money, would think of imposing. A gentleman of the name of Allington was fined £12,000 for marrying his niece. One who had sent a challenge to the earl of Northumberland was fined £5000; another for saying the earl of Suffolk was a base lord, £4000 to him, and a like sum to the king. Sir David Forbes, for opprobrious words against lord Wentworth, incurred £5000 to the king, and £3000 to the party. On some soap-boilers, who had not complied with the requisitions of the newly-incorporated company, mulcts were imposed of £1500 and £1000. It is evident that the strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof. From all that remains of proceedings in the star-chamber, they seem to have been very frequently as iniquitous as they were severe. In many celebrated instances the accused party suffered less on the score of any imputed offense than for having provoked the malice of a powerful adversary, or for notorious dissatisfaction with the existing government. Thus Williams, bishop of Lincoln, once lord-keeper, the favorite of king James, the possessor for a season of the power that was turned against him, experienced the rancorous and ungrateful malignity of Laud; who, having been brought forward by Williams into the favor of the court, not only supplanted by his intrigues, and incensed the king's mind against his benefactor, but harassed his retirement by repeated persecutions. It will sufficiently illustrate the spirit of these times to mention that the sole offense imputed to the bishop of Lincoln in the last information against him in the star-chamber was, that he had received certain letters from one Osbaldiston, master of Westminster school, wherein some contemptuous nickname was used to denote Laud. It did not appear that Williams had ever divulged these letters. But it was held that the concealment of a libelous letter was a high misdemeanor. Williams was therefore adjudged to pay £5000 to

the king and £3000 to the archbishop, to be imprisoned during pleasure, and to make a submission; Osbaldiston to pay a still heavier fine, to be deprived of all his benefices, to be imprisoned and make submission, and moreover to stand in the pillory before his school in Dean's Yard, with his ears nailed to it. This man had the good-fortune to conceal himself; but the bishop of Lincoln, refusing to make the required apology, lay about three years in the Tower, till released at the beginning of the long parliament.

It might detain me too long to dwell particularly on the punishments inflicted by the court of star-chamber in this reign. Two or three instances are so celebrated that I can not pass them over. Leighton, a Scots divine, having published an angry libel against the hierarchy, was sentenced to be publicly whipped at Westminster and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, to have the whole of this repeated the next week at Cheapside, and to suffer perpetual imprisonment in the Fleet. Lilburne, for dispersing pamphlets against the bishops, was whipped from the Fleet prison to Westminster, there set in the pillory, and treated afterward with great cruelty. Prynne, a lawyer of uncommon erudition, and a zealous puritan, had printed a bulky volume, called "Histriomastix," full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this he adverted to the appearance of courtesans on the Roman stage, and by a satirical reference in his index seemed to range all female actors in the class. The queen, unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at court. This passage was accordingly dragged to light by the malice of Peter Heylin, a chaplain of Laud, on whom the archbishop devolved the burden of reading this heavy volume in order to detect its offenses. Heylin, a bigoted enemy of every thing puritanical, and not scrupulous as to veracity, may be suspected of having aggravated, if not misrepresented, the tendency of a book much more tiresome than seditious. Prynne, however, was already obnoxious, and the star-chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of £5000, and to suffer perpetual imprisonment. The dogged puritan employed the leisure of a jail in writing a fresh libel against the hierarchy. For this, with two other delinquents of the same class, Burton a divine, and Bastwick a physician, he stood again at the bar of that terrible tribu-

nal. Their demeanor was what the court deemed intolerably contumacious, arising in fact from the despair of men who knew that no humiliation would procure them mercy. Prynne lost the remainder of his ears in the pillory; and the punishment was inflicted on them all with extreme and designed cruelty, which they endured, as martyrs always endure suffering, so heroically as to excite a deep impression of sympathy and resentment in the assembled multitude. They were sentenced to perpetual confinement in distant prisons. But their departure from London, and their reception on the road, were marked by signal expressions of popular regard; and their friends resorting to them even in Launceston, Chester, and Carnarvon castles, whither they were sent, an order of Council was made to transport them to the isles of the channel. It was the very first act of the long parliament to restore these victims of tyranny to their families. Punishments by mutilation, though not quite unknown to the English law, had been of rare occurrence; and thus inflicted on men whose station appeared to render the ignominy of whipping and branding more intolerable, they produced much the same effect as the still greater cruelties of Mary's reign, in exciting a detestation for that ecclesiastical dominion which protected itself by means so atrocious.

§ 14. The person on whom public hatred chiefly fell, and who proved in a far more eminent degree than any other individual the evil genius of this unhappy sovereign, was Laud. His talents, though enabling him to acquire a large portion of theological learning, seem to have been by no means considerable. There can not be a more contemptible work than his Diary; and his letters to Strafford display some smartness, but no great capacity. He managed, indeed, his own defense, when impeached, with some ability; but on such occasions ordinary men are apt to put forth a remarkable readiness and energy. Laud's inherent ambition had impelled him to court the favor of Buckingham, of Williams, and of both the kings under whom he lived, till he rose to the see of Canterbury on Abbot's death, in 1633. No one can deny that he was a generous patron of letters, and as warm in friendship as in enmity. But he had placed before his eyes the aggrandizement, first of the church, and next of the royal prerogative, as his end and aim in every action. Though not literally destitute of religion, it was so subordinate to worldly interest, and so blended in his mind with the impure alloy of temporal pride, that he became an intolerant persecutor of the puritan clergy, not from bigotry, which in

its usual sense he never displayed, but systematic policy. And being subject, as his friends call it, to some infirmities of temper—that is, choleric, vindictive, harsh, and even cruel to a great degree—he not only took a prominent share in the severities of the star-chamber, but, as his correspondence shows, perpetually lamented that he was restrained from going further lengths.

Laud's extraordinary favor with the king, through which he became a prime adviser in matters of state, rendered him secretly obnoxious to most of the council, jealous, as ministers must always be, of a churchman's overweening ascendency. His faults, and even his virtues, contributed to this odium. For, being exempt from the thirst of lucre, and, though in the less mature state of his fortunes a subtile intriguer, having become frank through heat of temper and self-confidence, he discountenanced all schemes to serve the private interest of courtiers at the expense of his master's exhausted treasury, and went right onward to his object, the exaltation of the church and crown. He aggravated the invidiousness of his own situation, and gave an astonishing proof of his influence, by placing Juxon, bishop of London, a creature of his own, in the greatest of all posts, that of lord high-treasurer. Though Williams had lately been lord-keeper of the seal, it seemed more preposterous to place the treasurer's staff in the hands of a churchman, and of one so little distinguished even in his own profession, that the archbishop displayed his contempt of the rest of the council, especially Cottington, who aspired to that post, by such a recommendation. He had previously procured the office of secretary of state for Windebank. But, though overawed by the king's infatuated partiality, the faction adverse to Laud were sometimes able to gratify their dislike, or to manifest their greater discretion, by opposing obstacles to his impetuous spirit.

§ 15. Of these impediments, which a rash and ardent man calls lukewarmness, indolence, and timidity, he frequently complains in his correspondence with the lord-deputy of Ireland—that lord Wentworth, so much better known by the title of earl of Strafford, which he only obtained the year before his death, that we may give it him by anticipation, whose doubtful fame and memorable end have made him nearly the most conspicuous character of a reign so fertile in recollections. Strafford had in his early years sought those local dignities to which his ambition probably was at that time limited, the representation of the county of York and

the post of custos rotulorum, through the usual channel of court favor. Slighted by the duke of Buckingham, and mortified at the preference shown to the head of a rival family, sir John Saville, he began to quit the cautious and middle course he had pursued in parliament, and was reckoned among the opposers of the administration after the accession of Charles. He was one of those who were made sheriffs of their counties, in order to exclude them from the parliament of 1626. This inspired so much resentment, that he signalized himself as a refuser of the arbitrary loan exacted the next year, and was committed in consequence to prison. He came to the third parliament with a determination to make the court sensible of his power, and possibly with some real zeal for the liberties of his country. But patriotism unhappily, in his self-interested and ambitious mind, was the seed sown among thorns. He had never lost sight of his hopes from the court; even a temporary reconciliation with Buckingham had been effected in 1627, which the favorite's levity soon broke; and he kept up a close connection with the treasurer Weston. Always jealous of a rival, he contracted a dislike for sir John Eliot, and might suspect that he was likely to be anticipated by that more distinguished patriot in royal favors. The hour of Wentworth's glory was when Charles assented to the Petition of Right, in obtaining which, and in overcoming the king's chicane and the hesitation of the lords, he had been pre-eminently conspicuous. From this moment he started aside from the path of true honor; and, being suddenly elevated to the peerage and a great post, the presidency of the council of the North, commenced a splendid but baleful career, that terminated at the scaffold. After this fatal apostasy he not only lost all solicitude about those liberties which the Petition of Right had been designed to secure, but became their deadliest and most shameless enemy.

The council of the North was erected by Henry VIII. after the suppression of the great insurrection of 1536. It had a criminal jurisdiction in Yorkshire and the four more northern counties, as to riots, conspiracies, and acts of violence. It had also, by its original commission, a jurisdiction in civil suits, where either of the parties were too poor to bear the expenses of a process at common law; in which case the council might determine, as it seems, in a summary manner, and according to equity. But this latter authority had been held illegal by the judges under Elizabeth. In fact, the lawfulness of this tribunal in any respect was, to say the least,

highly problematical. It was regulated by instructions issued from time to time under the great seal. Wentworth spared no pains to enlarge the jurisdiction of his court. A commission issued in 1632, empowering the council of the North to hear and determine all offenses, misdemeanors, suits, debates, controversies, demands, causes, things, and matters whatsoever therein contained, within certain precincts, namely, from the Humber to the Scots frontier. They were specially appointed to hear and determine divers offenses, according to the course of the star-chamber, whether provided for by act of parliament or not; to hear complaints according to the rules of the court of chancery, and stay proceedings at common law by injunction; to attach persons by their sergeant in any part of the realm.

These inordinate powers, the soliciting and procuring of which, especially by a person so well versed in the laws and constitution, appears to be of itself a sufficient ground for impeachment, were abused by Strafford to gratify his own pride, as well as to intimidate the opposers of arbitrary measures. Proofs of this occur in the prosecution of sir David Foulis, in that of Mr. Bellasis, in that of Mr. Maleverer, for the circumstances of which I refer the reader to more detailed history.

Without resigning his presidency of the northern council, Wentworth was transplanted in 1633 to a still more extensive sphere, as lord-deputy of Ireland. This was the great scene on which he played his part: it was here that he found abundant scope for his commanding energy and imperious passions. The Richelieu of that island, he made it wealthier in the midst of exactions, and, one might almost say, happier in the midst of oppressions. He curbed subordinate tyranny; but his own left a sting behind it that soon spread a deadly poison over Ireland. But of his merits and his injustice toward that nation I shall find a better occasion to speak. Two well-known instances of his despotic conduct in respect of single persons may just be mentioned: the deprivation and imprisonment of the lord-chancellor Loftus for not obeying an order of the privy council to make such a settlement as they prescribed on his son's marriage — a stretch of interference with private concerns which was aggravated by the suspected familiarity of the lord-deputy with the lady who was to reap advantage from it; and, secondly, the sentence of death passed by a council of war on lord Mountnorris, in Strafford's presence, and evidently at his instigation, on account of some very slight expressions which he had used in

private society. Though it was never the deputy's intention to execute this judgment of his slaves, but to humiliate and trample upon Mountnorris, the violence and indecency of his conduct in it, his long persecution of the unfortunate prisoner after the sentence, and his glorying in the act at all times, and even on his own trial, are irrefragable proofs of such vindictive bitterness as ought, if there were nothing else, to prevent any good man from honoring his memory.

§ 16. The haughty and impetuous primate found a congenial spirit in the lord-deputy. They unbosom to each other, in their private letters, their ardent thirst to promote the king's service by measures of more energy than they were permitted to exercise. Do we think the administration of Charles during the interval of parliaments rash and violent? They tell us it was overcautious and slow. Do we revolt from the severities of the star-chamber? To Laud and Strafford they seemed the feebleness of excessive lenity. Do we cast on the crown-lawyers the reproach of having betrayed their country's liberties? We may find that, with their utmost servility, they fell far behind the expectations of the court, and their scruples were reckoned the chief shackles on the half-emancipated prerogative.

The system which Laud was longing to pursue in England, and which Strafford approved, is frequently hinted at by the word Thorough. "For the state," says he, "indeed, my lord, I am for Thorough; for I see that both thick and thin stay somebody, where I conceive it should not, and it is impossible to go thorough alone."

The cruelties exercised on Prynne and his associates have generally been reckoned among the great reproaches of the primate. It has sometimes been insinuated that they were rather the act of other counselors than his own. But his letters, as too often occurs, belie this charitable excuse. He expresses in them no sort of humane sentiment toward these unfortunate men, but the utmost indignation at the oscitancy of those in power, which connived at the public demonstrations of sympathy. "A little more quickness," he says, "in the government would cure this itch of libeling. But what can you think of Thorough when there shall be such slips in business of consequence? What say you to it, that Prynne and his fellows should be suffered to talk what they pleased while they stood in the pillory, and win acclamations from the people," etc.?

It is, however, remarkable that, with all Strafford's endeavors to render the king absolute, he did not intend to abolish

the use of parliaments. This was apparently the aim of Charles; but this able minister entertained very different views. He urged accordingly the convocation of one in Ireland, pledging himself for the experiment's success. And in a letter to a friend, after praising all that had been done in it, "Happy it were," he proceeds, "if we might live to see the like in England." But let it not be hastily conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise. A parliament was looked upon by him as a mere instrument of the prerogative. Hence he was strongly against permitting any mutual understanding among its members, by which they might form themselves into parties, and acquire strength and confidence by previous concert. Acting on this principle, he kept a watch on the Irish parliament to prevent those intrigues which his experience in England had taught him to be the indispensable means of obtaining a control over the crown. Thus fettered and kept in awe, no one presuming to take a lead in debate from uncertainty of support, parliaments would have become such mockeries of their venerable name as the joint contempt of the court and nation must soon have annihilated. Yet so difficult is it to preserve this dominion over any representative body, that the king judged far more discreetly than Strafford in desiring to dispense entirely with their attendance.

§ 17. It was perfectly consonant to Laud's temper and principles of government to extirpate, as far as in him lay, the lurking seeds of disaffection to the Anglican church. But the course he followed could in nature have no other tendency than to give them nourishment. His predecessor Abbot had perhaps connived to a limited extent at some irregularities of discipline in the puritanical clergy. His hatred to popery and zeal for Calvinism, which undoubtedly were narrow and intolerant, as well as his avowed disapprobation of those churchmen who preached up arbitrary power, gained for this prelate the favor of the party denominated puritan. In all these respects no man could be more opposed to Abbot than his successor. Besides reviving the prosecutions for non-conformity in their utmost strictness, wherein many of the other bishops vied with their primate, he most injudiciously, not to say wickedly, endeavored, by innovations of his own, and by exciting alarms in the susceptible consciences of pious men, to raise up new victims whom he might oppress. Those who made any difficulty about his novel ceremonies, or even who preached on the Calvinistic side, were

harassed by the high-commission court as if they had been actual schismatics. The most obnoxious, if not the most indefensible, of these prosecutions were for refusing to read what was called the "Book of Sports;" namely, a proclamation, or rather a renewal of that issued in the late reign, that certain feasts or wakes might be kept, and a great variety of pastimes used on Sundays after evening service. This was reckoned, as I have already observed, one of the tests of puritanism. But whatever superstition there might be in that party's judaical observance of the day they called the sabbath, it was in itself preposterous, and tyrannical in its intention, to enforce the reading in churches of this license, or rather recommendation, of festivity. The precise clergy refused in general to comply with the requisition, and were suspended or deprived in consequence.

The resolution so evidently taken by the court to admit of no half-conformity in religion, especially after Laud had obtained an unlimited sway over the king's mind, convinced the puritans that England could no longer afford them an asylum. The state of Europe was not such as to encourage their emigration, though many were well received in Holland. But, turning their eyes to the newly-discovered regions beyond the Atlantic Ocean, they saw a secure place of refuge from present tyranny, and a boundless prospect for future hope. They obtained from the crown the charter of Massachusetts Bay in 1629. About three hundred and fifty persons, chiefly or wholly of the independent sect, sailed with the first fleet. So many followed in the subsequent years that these New England settlements have been supposed to have drawn near half a million of money from the mother-country before the civil wars. Men of a higher rank than the first colonists, and now become hopeless alike of the civil and religious liberties of England, men of capacious and commanding minds, formed to be the legislators and generals of an infant republic, the wise and cautious lord Say, the acknowledged chief of the independent sect; the brave, open, and enthusiastic lord Brook; sir Arthur Haslerig; Hampden, ashamed of a country for whose rights he had fought alone; Cromwell, panting with energies that he could neither control nor explain, and whose unconquerable fire was still wrapped in smoke to every eye but that of his kinsman Hampden, were preparing to embark for America, when Laud, for his own and his master's curse, procured an order of council to stop their departure. Besides the reflections which such an instance of destructive infatuation must suggest,

there are two things not unworthy to be remarked: first, that these chiefs of the puritan sect, far from entertaining those schemes of overturning the government at home that had been imputed to them, looked only, in 1638, to escape from imminent tyranny; and, secondly, that the views of the archbishop were not so much to render the church and crown secure from the attempts of disaffected men, as to gratify a malignant humor by persecuting them.

§ 18. These severe proceedings of the court and hierarchy became more odious on account of their suspected leaning, or at least notorious indulgence, toward popery. With some fluctuations, according to circumstances or changes of influence in the council, the policy of Charles was to wink at the domestic exercise of the catholic religion, and to admit its professors to pay compositions for recusancy which were not regularly enforced. The favor of the administration, as well as the antipathy that every parliament had displayed toward them, not unnaturally rendered the catholics, for the most part, assertors of the king's arbitrary power. This again increased the popular prejudice. But nothing excited so much alarm as the perpetual conversions to their faith. These had not been quite unusual in any age since the Reformation, though the balance had been very much inclined to the opposite side. They became, however, under Charles, the news of every day; protestant clergymen in several instances, but especially women of rank, becoming proselytes to a religion so seductive to the timid reason and susceptible imagination of that sex. Moreover, all the innovations of the school of Laud were so many approaches, in the exterior worship of the church, to the Roman model. Pictures were set up or repaired; the communion-table took the name of an altar; it was sometimes made of stone; obeisances were made to it; the crucifix was sometimes placed upon it; the dress of the officiating priests became more gaudy; churches were consecrated with strange and mystical pageantry. These petty superstitions, which would of themselves have disgusted a nation accustomed to despise as well as abhor the pompous rites of the catholics, became more alarming from the evident bias of some leading churchmen to parts of the Romish theology. The doctrine of a real presence, distinguishable only by vagueness of definition from that of the church of Rome, was generally held. Montagu, bishop of Chichester, already so conspicuous, and justly reckoned the chief of the Romanizing faction, went a considerable length toward admitting the invocation of saints; prayers for the dead, which

lead naturally to the tenet of purgatory, were vindicated by many; in fact, there was hardly any distinctive opinion of the church of Rome which had not its abettors among the bishops, or those who wrote under their patronage. The practice of auricular confession, which an aspiring clergy must so deeply regret, was frequently inculcated as a duty. And Laud gave just offense by a public declaration that in the disposal of benefices he should, in equal degrees of merit, prefer single before married priests. They incurred scarcely less odium by their dislike of the Calvinistic system, and by what ardent men construed into a dereliction of the protestant cause, a more reasonable and less dangerous theory on the nature and reward of human virtue than that which the fanatical and presumptuous spirit of Luther had held forth as the most fundamental principle of his Reformation.

It must be confessed that these English theologians were less favorable to the papal supremacy than to most other distinguishing tenets of the catholic church. Yet even this they were inclined to admit in a considerable degree, as a matter of positive, though not divine, institution; content to make the doctrine and discipline of the fifth century the rule of their bastard reform. An extreme reverence for what they called the primitive church had been the source of their errors. The first reformers had paid little regard to that authority. But as learning, by which was then meant an acquaintance with ecclesiastical antiquity, grew more general in the church, it gradually inspired more respect for itself; and men's judgment in matters of religion came to be measured by the quantity of their erudition. The sentence of the early writers, including the fifth and perhaps sixth centuries, if it did not pass for infallible, was of prodigious weight in controversy. No one in the English church seems to have contributed so much toward this relapse into superstition as Andrews, bishop of Winchester, a man of eminent learning in this kind, who may be reckoned the founder of the school wherein Laud was the most prominent disciple.

A characteristic tenet of this party was, as I have already observed, that episcopal government was indispensably requisite to a Christian church. Hence they treated the presbyterians with insolence abroad and severity at home.

It is alleged by one who had much access to Laud, that his object in these accommodations was to draw over the more moderate Romanists to the English church, by extenuating the differences of her faith, and rendering her worship

more palatable to their prejudices.[5] There was, however, good reason to suspect, from the same writer's account, that some leading ecclesiastics entertained schemes of a complete reunion; and later discoveries have abundantly confirmed this suspicion.

§ 19. The catholics did not fail to anticipate the most favorable consequences from this turn in the church. The Clarendon State Papers, and many other documents, contain remarkable proofs of their sanguine and not unreasonable hopes. Weston the lord-treasurer, and Cottington, were already in secret of their persuasion; though the former did not take much pains to promote their interests. No one, however, showed them such decided favor as secretary Windebank, through whose hands a correspondence was carried on with the court of Rome by some of its agents. They exult in the peaceful and flourishing state of their religion in England as compared with former times. But these letters contain a partial representation; that is, they impute to the Anglican clergy in general what was only true of a certain number. Their aim was to inspire the court of Rome with more favorable views of that of England, and thus to pave the way for a permission of the oath of allegiance, at least with some modification of its terms. Such flattering tales naturally excited the hopes of the Vatican, and contributed to the mission of Panzani, who was instructed to feel the pulse of the nation, and communicate more unbiased information to his court than could be expected from the English priests. He confirmed, by his letters, the general truth of the former statements as to the tendency of the Anglican church, and the favorable dispositions of the court. The king received him secretly, but with much courtesy; the queen and the catholic ministers, Cottington and Windebank, with unreserved confidence. The two latter, indeed, commenced a negotiation for the reconciliation of the church of England with that of Rome. Bishop Montagu soon made himself a party, and had several interviews with Panzani. He professed the strongest desire for a union, and added, that he was satisfied both the archbishops, the bishop of London, and several others of that order, besides many of the inferior clergy, were prepared to acknowledge the spiritual supremacy of the holy see; there being no method of ending controversies but by recurring to some centre of ecclesiastical unity. But the negotiation came to nothing. It appears almost certain that Montagu made too free with the

[5] Heylen's Life of Laud, 390.

name of the archbishop, and probably of many others; and it is well worthy of remark, that the popish party did not entertain any sanguine hopes of the king's conversion. The court of Rome, however, omitted no token of civility or goodwill to conciliate our king's favor. Besides expressions of paternal kindness which Urban lavished on him, cardinal Barberini gratified his well-known taste by a present of pictures. Charles showed a due sense of these courtesies. The prosecutions of recusants were absolutely stopped, by cashiering the pursuivants who had been employed in the odious office of detecting them. It was arranged that reciprocal diplomatic relations should be established, and consequently that an English agent should constantly reside at the court of Rome, by the nominal appointment of the queen, but empowered to conduct the various negotiations in hand.

§ 20. This exceeding boldness of the catholic party, and their success in conversions, which were, in fact, less remarkable for their number than for the condition of the persons, roused the primate himself to some apprehension. He preferred a formal complaint to the king in council against the resort of papists to the queen's chapel, and the insolence of some active zealots about the court. Henrietta, who had courted his friendship, and probably relied on his connivance, if not support, seems never to have forgiven this unexpected attack. Laud gave another testimony of his unabated hostility to popery by republishing with additions his celebrated conference with the jesuit Fisher, a work reckoned the great monument of his learning and controversial acumen. This conference had taken place many years before, at the desire and in the presence of the countess of Buckingham, the duke's mother. Those who are conversant with literary and ecclesiastical anecdote must be aware that nothing was more usual in the seventeenth century than such single combats under the eye of some fair lady, whose religious faith was to depend upon the victory.

§ 21. At this time Chillingworth had been induced, like so many others, to pass over to the Roman church. The act of transition, it may be observed, from a system of tenets wherein men had been educated, was in itself a vigorous exercise of free speculation, and might be termed the suicide of private judgment. But in Chillingworth's restless mind there was an inextinguishable skepticism that no opiates could subdue; yet a skepticism of that species which belongs to a vigorous, not that which denotes a feeble, understanding. Dissatisfied with his new opinions, of which he had never been

really convinced, he panted to breathe the freer air of protestantism, and, after a long and anxious investigation, returned to the English church. He well redeemed any censure that might have been thrown on him, by his great work in answer to the jesuit Knott, entitled "The Religion of Protestants a Safe Way to Salvation." In the course of his reflections he had perceived the insecurity of resting the Reformation on any but its original basis, the independency of private opinion. This, too, he asserted with a fearlessness and consistency hitherto little known, even within the protestant pale; combining it with another principle, which the zeal of the early reformers had rendered them unable to perceive, and for want of which the adversary had perpetually discomfited them, namely, that the errors of conscientious men do not forfeit the favor of God. This endeavor to mitigate the dread of forming mistaken judgments in religion runs through the whole work of Chillingworth, and marks him as the founder, in this country, of what has been called the latitudinarian school of theology. In this view, which has practically been the most important one of the controversy, it may pass for an anticipated reply to the most brilliant performance on the opposite side, the "History of the Variations of Protestant Churches;" and those who from a delight in the display of human intellect, or from more serious motives of inquiry, are led to these two masterpieces, will have seen, perhaps, the utmost strength that either party, in the great schism of Christendom, has been able to put forth.

§ 22. The latitudinarian principles of Chillingworth appear to have been confirmed by his intercourse with a man, of whose capacity his contemporaries entertained so high an admiration, that he acquired the distinctive appellation of the Ever-memorable John Hales. This testimony of so many enlightened men is not to be disregarded, even if we should be of opinion that the writings of Hales, though abounding with marks of an unshackled mind, do not quite come up to the promise of his name. He had, as well as Chillingworth, borrowed from Leyden, perhaps a little from Racow, a tone of thinking upon some doctrinal points, as yet nearly unknown, and therefore highly obnoxious, in England. More hardy than his friend, he wrote a short treatise on schism, which tended, in pretty blunt and unlimited language, to overthrow the scheme of authoritative decisions in any church, pointing at the imposition of unnecessary ceremonies and articles of faith as at once the cause and the apology of separation. This, having been circulated in man-

uscript, came to the knowledge of Laud, who sent for Hales to Lambeth, and questioned him as to his opinions on that matter. Hales, though willing to promise that he would not publish the tract, receded not a jot from his free notions of ecclesiastical power; which he again advisedly maintained in a letter to the archbishop, now printed among his works. The result was equally honorable to both parties; Laud bestowing a canonry of Windsor on Hales, which, after so bold an avowal of his opinion, he might accept without the slightest reproach. A behavior so liberal forms a singular contrast to the rest of this prelate's history. It is a proof, no doubt, that he knew how to set such a value on great abilities and learning, as to forgive much that wounded his pride. But besides that Hales had not made public this treatise on schism, for which I think he could not have escaped the high-commission court, he was known by Laud to stand far aloof from the Calvinistic sectaries, having long since embraced in their full extent the principles of Episcopius, and to mix no alloy of political faction with the philosophical hardiness of his speculations.

These two remarkable ornaments of the English church, who dwelt apart like stars, to use the fine expression of a living poet, from the vulgar bigots of both her factions, were accustomed to meet, in the society of some other eminent persons, at the house of lord Falkland, near Burford. One of those, who, then in a ripe and learned youth, became afterward so conspicuous a name in our annals and our literature, Mr. Hyde, the chosen bosom-friend of his host, has dwelt with affectionate remembrance on the conversations of that mansion. His marvelous talent of delineating character—a talent, I think, unrivaled by any writer (since, combining the bold outline of the ancient historians with the analytical minuteness of De Retz and St. Simon, it produces a higher effect than either)—is never more beautifully displayed than in that part of the memoirs of his life where Falkland, Hales, Chillingworth, and the rest of his early friends, pass over the scene.

§ 23. For almost thirty ensuing years Hyde himself becomes the companion of our historical reading. Seven folio volumes contain his "History of the Rebellion," his "Life," and the "Letters," of which a large portion are his own.[6]

[6] The genuine text of the History has only been published in 1826. A story, as is well known, obtained circulation within thirty years after its first appearance, that the manuscript had been materially altered or interpolated. This was positively denied, and supposed to be wholly disproved. It turns out, however, that, like many other anecdotes, it had a considerable basis of truth, though with various erroneous

We contract an intimacy with an author who has poured out to us so much of his heart. Though lord Clarendon's chief work seems to me not accurately styled a history, belonging rather to the class of memoirs, yet the very reasons of this distinction, the long circumstantial narrative of events wherein he was engaged, and the slight notice of those which he only learned from others, render it more interesting, if not more authentic. Conformably to human feelings, though against the rules of historical composition, it bears the continual impress of an intense concern about what he relates. This depth of personal interest, united frequently with an eloquence of the heart and imagination that struggles through an involved, incorrect, and artificial diction, makes it, one would imagine, hardly possible for those most alien from his sentiments to read his writings without some portion of sympathy. But they are on this account not a little dangerous to the soundness of our historical conclusions; the prejudices of Clarendon, and his negligence as to truth, being full as striking as his excellencies, and leading him not only into many erroneous judgments, but into frequent inconsistencies.

These inconsistencies are nowhere so apparent as in the first or introductory book of his "History," which professes to give a general view of the state of affairs before the meeting of the long parliament. It is certainly the most defective part of his work. A strange mixture of honesty and disingenuousness pervades all he has written of the early years of the king's reign; retracting, at least in spirit, in almost every page what has been said in the last, from a constant fear that he may have admitted so much against the government as to make his readers impute too little blame to those

additions, and probably willful misrepresentations. For though the worthy editor of the original manuscript endeavors, not quite necessarily, to excuse or justify the original editors (who seem to have been Sprat and Aldrich, with the sanction probably of lords Clarendon and Rochester, the historian's sons) for what they did, and even singularly asserts that "the present collation satisfactorily proves that they have in no one instance added, suppressed, or altered any historical fact" (Adver. to edit. 1826, p. v.), yet it is certain that, besides the perpetual impertinence of mending the style, there are several hundred variations which affect the sense, introduced from one motive or another, and directly contrary to the laws of literary integrity. The long passages inserted in the appendices to several volumes of this edition contain surely historical facts that had been suppressed. And, even with respect to subordinate alterations, made for the purpose of softening traits of the author's angry temper, or correcting his mistakes, the general effect of taking such liberties with a work is to give it an undue credit in the eyes of the public, and to induce men to believe matters upon the writer's testimony, which they would not have done so readily if his errors had been fairly laid before them. Clarendon, indeed, is so strangely loose in expression as well as incorrect in statement, that it would have been impossible to remove his faults of this kind without writing again half the History; but it is certain that great trouble was very unduly taken to lighten their impression upon the world.

who opposed it. Thus, after freely censuring the exactions of the crown, whether on the score of obsolete prerogative or without any just pretext at all, especially that of ship-money, and confessing that "those foundations of right, by which men valued their security, were never, to the apprehension and understanding of wise men, in more danger of being destroyed," he turns to dwell on the prosperous state of the kingdom during this period, "enjoying the greatest calm and the fullest measure of felicity that any people in any age for so long time together have been blessed with," till he works himself up to a strange paradox, that "many wise men thought it a time wherein those two adjuncts, which Nerva was deified for uniting, Imperium et Libertas, were as well reconciled as is possible."

We may acknowledge without hesitation that the kingdom had grown during this period into remarkable prosperity and affluence. The rents of land were very considerably increased, and large tracts reduced into cultivation. The manufacturing towns, the sea-ports, became more populous and flourishing. The metropolis increased in size with a rapidity that repeated proclamations against new buildings could not restrain. The country houses of the superior gentry throughout England were built on a scale which their descendants, even in days of more redundant affluence, have seldom ventured to emulate. The kingdom was indebted for this prosperity to the spirit and industry of the people, to the laws which secure the commons from oppression, and which, as between man and man, were still fairly administered; to the opening of fresh channels of trade in the Eastern and Western worlds (rivulets, indeed, as they seem to us who float in the full tide of modern commerce, yet at that time no slight contributions to the stream of public wealth); but, above all, to the long tranquillity of the kingdom, ignorant of the sufferings of domestic, and seldom much affected by the privations of foreign, war. It was the natural course of things that wealth should be progressive in such a land. Extreme tyranny, such as that of Spain in the Netherlands, might, no doubt, have turned back the current. A less violent but long-continued despotism, such as has existed in several European monarchies, would, by the corruption and incapacity which absolute governments engender, have retarded its advance. The administration of Charles was certainly not of the former description. Yet it would have been an excess of loyal stupidity in the nation to have attributed their riches to the wisdom or virtue of the court,

which had injured the freedom of trade by monopolies and arbitrary proclamations, and driven away industrious manufacturers by persecution.

If we were to draw our knowledge from no other book than lord Clarendon's "History," it would still be impossible to avoid the inference that misconduct on the part of the crown, and more especially of the church, was the chief, if not the sole, cause of these prevailing discontents.

§ 24. It is difficult to pronounce how much longer the nation's signal forbearance would have held out if the Scots had not precipitated themselves into rebellion. There was still a confident hope that parliament must soon or late be assembled, and it seemed equally impolitic and unconstitutional to seek redress by any violent means. The patriots, too, had just cause to lament the ambition of some whom the court's favor subdued, and the levity of many more whom its vanities allured. But the unexpected success of the tumultuous rising at Edinburgh against the service-book revealed the impotence of the English government. Destitute of money, and neither daring to ask it from a parliament, nor to extort it by any fresh demand from the people, they hesitated whether to employ force or to submit to the insurgents. In the exchequer, as lord Northumberland wrote to Strafford, there was but the sum of £200; with all the means that could be devised, not above £110,000 could be raised; the magazines were all unfurnished, and the people were so discontented by reason of the multitude of projects daily imposed upon them, that he saw reason to fear a great part of them would be readier to join with the Scots than to draw their swords in the king's service. Strafford himself dissuaded a war in such circumstances, though hardly knowing what other course to advise. In this imminent necessity the king had recourse to those who had least cause to repine at his administration. The catholic gentry, at the powerful interference of their queen, made large contributions toward the campaign of 1639.

The pacification, as it was termed, of Berwick, in the summer of 1639, has been represented by several historians as a measure equally ruinous and unaccountable. That it was so far ruinous as it formed one link in the chain that dragged the king to destruction, is most evident; but it was both inevitable and easy of explanation. The treasury, whatever Clarendon and Hume may have said, was perfectly bankrupt. The citizens of London, on being urged by the council for a loan, had used as much evasion as they dared. The

writs for ship-money were executed with greater difficulty, several sheriffs willingly acquiescing in the excuses made by their counties. The Scots were enthusiastic, nearly unanimous, and entire masters of their country. The English nobility in general detested the archbishop, to whose passion they ascribed the whole mischief, and feared to see the king become despotic in Scotland. If the terms of Charles's treaty with his revolted subjects were unsatisfactory and indefinite, enormous in concession, and yet affording a pretext for new encroachments, this is no more than the common lot of the weaker side.

There was one possible, though not under all the circumstances very likely, method of obtaining the sinews of war—the convocation of parliament. This many, at least, of the king's advisers appear to have long desired, could they but have vanquished his obstinate reluctance. This is an important observation: Charles, and he perhaps alone, unless we reckon the queen, seems to have taken a resolution of superseding absolutely and forever the legal constitution of England. The judges, the peers, lord Strafford, nay, if we believe his dying speech, the primate himself, retained enough of respect for the ancient laws to desire that parliaments should be summoned whenever they might be expected to second the views of the monarch. They felt that the new scheme of governing by proclamations and writs of ship-money could not and ought not to be permanent in England. The king reasoned more royally, and indeed much better. He well perceived that it was vain to hope for another parliament so constituted as those under the Tudors. He was ashamed that his brothers of France and Spain should have achieved a work which the sovereign of England, though called an absolute king by his courtiers, had scarcely begun. All mention, therefore, of calling parliament grated on his ear. The declaration published at the dissolution of the last, that he should account it presumption for any one to prescribe a time to him for calling parliaments, was meant to extend even to his own counselors. He rated severely lord-keeper Coventry for a suggestion of this kind. This repugnance to meet his people, and his inability to carry on the war by any other methods, produced the ignominious pacification at Berwick. But as the Scots, grown bolder by success, had, after this treaty, almost thrown off all subjection, and the renewal of the war, or loss of the sovereignty over that kingdom, appeared necessary alternatives, overpowered by the concurrent advice of his council, and especially of

Strafford, he issued writs for that parliament which met in April, 1640. They told him that, making trial once more of the ancient and ordinary way, he would leave his people without excuse if that should fail; and have wherewithal to justify himself to God and the world, if he should be forced contrary to his inclinations to use extraordinary means, rather than through the peevishness of some factious spirit to suffer his state and government to be lost.

§ 25. It has been universally admitted that the parliament which met on the 13th of April, 1640, was as favorably disposed toward the king's service, and as little influenced by their many wrongs, as any man of ordinary judgment could expect. But though cautiously abstaining from any intemperance, so much as to reprove a member for calling ship-money an abomination (no very outrageous expression), they sufficiently manifested a determination not to leave their grievances unredressed. Petitions against the manifold abuses in church and state covered their table; Pym, Rudyard, Waller, lord Digby, and others more conspicuous afterward, excited them by vigorous speeches; they appointed a committee to confer with the lords, according to some precedents of the last reign, on a long list of grievances, divided into ecclesiastical innovations, infringements of the propriety of goods, and breaches of the privilege of parliament. They voted a request of the peers, who, Clarendon says, were more entirely at the king's disposal, that they would begin with the business of supply, and not proceed to debate on grievances till afterward, to be a high breach of privilege. There is not the smallest reason to doubt that they would have insisted on redress in all those particulars with at least as much zeal as any former parliament, and that the king, after obtaining his subsidies, would have put an end to their remonstrances, as he had done before. In order to obtain the supply he demanded, namely, twelve subsidies, to be paid in three years, which, though unusual, was certainly not beyond his exigencies, he offered to release his claim to ship-money in any manner they should point out. But this the commons indignantly repelled. They deemed ship-money the great crime of his administration, and the judgment against Mr. Hampden the infamy of those who pronounced it. Till that judgment should be annulled, and those judges punished, the national liberties must be as precarious as ever.

While the commons were deliberating whether to promise any supply before the redress of grievances, and in what measure, sir Henry Vane, the secretary, told them that the

king would accept nothing less than the twelve subsidies he had required; in consequence of which the parliament was dissolved next day. Clarendon, followed by several others, has imputed treachery in this to Vane, and told us that the king regretted so much what he had done, that he wished, had it been practicable, to recall the parliament after its dissolution. This is confirmed, as to Vane, by the queen herself, in that interesting narrative which she communicated to Madame de Motteville. Were it not for such authorities, seemingly independent of each other, yet entirely tallying, I should have deemed it more probable that Vane, with whom the solicitor-general Herbert had concurred, acted solely by the king's command. Charles, who feared and hated all parliaments, had not acquiesced in the scheme of calling the present till there was no alternative; an insufficient supply would have left him in a more difficult situation than before as to the use of those extraordinary means, as they were called, which his disposition led him to prefer: the intention to assail parts of his administration more dear to him than ship-money, and especially the ecclesiastical novelties, was apparent. Nor can we easily give him credit for this alleged regret at the step he had taken, when we read the declaration he put forth, charging the commons with entering on examination of his government in an insolent and audacious manner, traducing his administration of justice, rendering odious his officers and ministers of state, and introducing a way of bargaining and contracting with the king, as if nothing ought to be given him by them but what he should purchase, either by quitting somewhat of his royal prerogative, or by diminishing and lessening his revenue. The unconstitutional practice of committing to prison some of the most prominent members, and searching their houses for papers, was renewed. And having broken loose again from the restraints of law, the king's sanguine temper looked to such a triumph over the Scots in the coming campaign as no prudent man could think probable.

§ 26. This dissolution of parliament in May, 1640, appears to have been a very fatal crisis for the king's popularity. Those who, with the loyalty natural to Englishmen, had willingly ascribed his previous misgovernment to evil counsels, could not any longer avoid perceiving his mortal antipathy to any parliament that should not be as subservient as the cortes of Castile. The necessity of some great change became the common theme. "It is impossible," says lord Northumberland, at that time a courtier, "that things can long con-

tinue in the condition they are now in; so general a defection in this kingdom hath not been known in the memory of any." Several of those who thought most deeply on public affairs now entered into a private communication with the Scots insurgents. The king meanwhile experienced aggravated misfortune and ignominy in his military operations. Ship-money indeed was enforced with greater rigor than before, several sheriffs and the lord mayor of London being persecuted in the star-chamber for neglecting to levy it. Some citizens were imprisoned for refusing a loan. A new imposition was laid on the counties, under the name of coat-and-conduct-money, for clothing and defraying the traveling charges of the new levies. A state of actual invasion, the Scots having passed the Tweed, might excuse some of these irregularities, if it could have been forgotten that the war itself was produced by the king's impolicy, and if the nation had not been prone to see friends and deliverers rather than enemies in the Scottish army. They were at the best, indeed, troublesome and expensive guests to the northern counties which they occupied; but the cost of their visit was justly laid at the king's door. Various arbitrary resources having been suggested in the council, and abandoned as inefficient and impracticable—such as the seizing the merchants' bullion in the Mint, or issuing a debased coin—the unhappy king adopted the hopeless scheme of convening a great council of all the peers at York, as the only alternative of a parliament. It was foreseen that this assembly would only advise the king to meet his people in a legal way. The public voice could no longer be suppressed. The citizens of London presented a petition to the king, complaining of grievances, and asking for a parliament. This was speedily followed by one signed by twelve peers of popular character. The lords assembled at York almost unanimously concurred in the same advice, to which the king, after some hesitation, gave his assent. They had more difficulty in bringing about a settlement with the Scots: the English army, disaffected and undisciplined, had already made an inglorious retreat; and even Strafford, though passionately against a treaty, did not venture to advise an engagement. The majority of the peers, however, overruled all opposition; and in the alarming posture of his affairs, Charles had no resource but the dishonorable pacification of Ripon. Anticipating the desertion of some who had partaken in his councils, and conscious that others would more stand in need of his support than be capable of affording any, he awaited in fearful suspense the meeting of parliament.

CHAPTER IX.

FROM THE MEETING OF THE LONG PARLIAMENT TO THE BEGINNING OF THE CIVIL WAR.

§ 1. Character of Long Parliament. § 2. Its salutary Measures. Triennial Bill. § 3. Other beneficial Laws. Abolition of Star-Chamber and High-Commission Courts. Observations. § 4. Impeachment of Strafford. Discussion of its Justice. § 5. Act against Dissolution of Parliament without its Consent. § 6. Innovations meditated in the Church. § 7. Schism in the Constitutional Party. Remonstrance of November, 1641. § 8. Suspicions of the King's Sincerity. Attempt to seize the Five Members. § 9. Question of the Militia. § 10. Historical Sketch of Military Force in England. § 11. Encroachments of the Parliament. § 12. Nineteen Propositions. § 13. Discussion of the respective Claims of the two Parties to Support. Faults of both.

§ 1. WE are now arrived at that momentous period in our history which no Englishman ever regards without interest, and few without prejudice; the period from which the factions of modern times trace their divergence, which, after the lapse of almost two centuries, still calls forth the warm emotions of party spirit, and affords a test of political principles; at that famous parliament, the theme of so much eulogy and of so much reproach; that synod of inflexible patriots with some, that conclave of traitorous rebels with others; that assembly, we may more truly say, of unequal virtue and checkered fame, which, after having acquired a higher claim to our gratitude, and effected more for our liberties, than any that had gone before or that has followed, ended by subverting the constitution it had strengthened, and by sinking in its decrepitude, and amidst public contempt, beneath a usurper it had blindly elevated to power.

§ 2. It seems agreeable to our plan, first to bring together those admirable provisions by which this parliament restored and consolidated the shattered fabric of our constitution, before we advert to its measures of more equivocal benefit, or its fatal errors; an arrangement not very remote from that of mere chronology, since the former were chiefly completed within the first nine months of its session, before the king's journey to Scotland in the summer of 1641.

It must, I think, be admitted by every one who concurs in the representation given in this work, and especially in the last chapter, of the practical state of our government, that some new securities of a more powerful efficacy than any which the existing laws held forth were absolutely indis-

pensable for the preservation of English liberties and privileges. Nothing could be more obvious than that the excesses of the late unhappy times had chiefly originated in the long intermission of parliaments. No lawyer would have dared to suggest ship-money with the terrors of a house of commons before his eyes. But the king's known resolution to govern without parliaments gave bad men more confidence of impunity. This resolution was not likely to be shaken by the unpalatable chastisement of his servants and redress of abuses, on which the present parliament was about to enter. A statute as old as the reign of Edward III. had already provided that parliaments should be held "every year, or oftener if need be." But this enactment had in no age been respected. It was certain that, in the present temper of the administration, a law simply enacting that the interval between parliaments should never exceed three years would prove wholly ineffectual. In the famous act, therefore, for triennial parliaments, the first-fruits of the commons' laudable zeal for reformation, such provisions were introduced as grated harshly on the ears of those who valued the royal prerogative above the liberties of the subject, but without which the act itself might have been dispensed with. Every parliament was to be ipso facto dissolved at the expiration of three years from the day of its first session, unless actually sitting at the time, and in that case at its first adjournment or prorogation. The chancellor or keeper of the great seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under pain of disability to hold his office, and further punishment: in case of his failure to comply with this provision, the peers were enabled and enjoined to meet at Westminster, and to issue writs to the sheriffs; the sheriffs themselves, should the peers not fulfill this duty, were to cause elections to be duly made; and in their default, at a prescribed time the electors themselves were to proceed to choose their representatives. No future parliament was to be dissolved or adjourned without its own consent in less than fifty days from the opening of its session. To this important bill the king, with some apparent unwillingness, gave his assent. It effected, indeed, a strange revolution in the system of his government. The nation set a due value on this admirable statute, the passing of which they welcomed with bonfires and every mark of joy.

§ 3. After laying this solid foundation for the maintenance of such laws as they might deem necessary, the house

of commons proceeded to cut away the more flagrant and recent usurpations of the crown. They passed a bill declaring ship-money illegal, and annulling the judgment of the exchequer chamber against Mr. Hampden. They put an end to another contested prerogative, which, though incapable of vindication on any legal authority, had more support from a usage of fourscore years—the levying of customs on merchandise. In an act granting the king tonnage and poundage, it is "declared and enacted that it is, and hath been, the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever, ought or may be laid or imposed upon any merchandise exported or imported by subjects, denizens, or aliens, without common consent in parliament." This is the last statute that has been found necessary to restrain the crown from arbitrary taxation, and may be deemed the complement of those numerous provisions which the virtue of ancient times had extorted from the first and third Edwards.

Yet these acts were hardly so indispensable, nor wrought so essential a change in the character of our monarchy, as that which abolished the star-chamber. This act abrogates all exercise of jurisdiction, properly so called, whether of a civil or criminal nature, by the privy council as well as the star-chamber. The power of examining and committing persons charged with offenses is by no means taken away; but it is enacted, that every person committed by the council or any of them, or by the king's special command, may have his writ of habeas corpus: in the return to which, the officer in whose custody he is shall certify the true cause of his commitment, which the court from whence the writ has issued shall within three days examine, in order to see whether the cause thus certified appear to be just and legal or not, and do justice accordingly by delivering, bailing, or remanding the party. Thus fell the great court of star-chamber, and with it the whole irregular and arbitrary practice of government, that had for several centuries so thwarted the operation and obscured the light of our free constitution, that many have been prone to deny the existence of those liberties which they found so often infringed, and to mistake the violations of law for its standard.

With the court of star-chamber perished that of the high-commission, a younger birth of tyranny, but perhaps even more hateful, from the peculiar irritation of the times. It had stretched its authority beyond the tenor of the act of Elizabeth whereby it had been created, and which limits its

competence to the correction of ecclesiastical offenses according to the known boundaries of ecclesiastical jurisdiction, assuming a right not only to imprison, but to fine, the laity, which was generally reckoned illegal. The statute repealing that of Elizabeth, under which the high commission existed, proceeds to take away from the ecclesiastical courts all power of inflicting temporal penalties, in terms so large, and doubtless not inadvertently employed, as to render their jurisdiction nugatory. This part of the act was repealed after the Restoration; and, like the other measures of that time, with little care to prevent the recurrence of those abuses which had provoked its enactments.

A single clause in the act that abolished the star-chamber was sufficient to annihilate the arbitrary jurisdiction of several other irregular tribunals, grown out of the despotic temper of the Tudor dynasty: the court of the president and council of the North, long obnoxious to the common lawyers, and lately the sphere of Strafford's tyrannical arrogance; the court of the president and council of Wales and the Welsh marshes, which had pretended, as before mentioned, to a jurisdiction over the adjacent counties of Salop, Worcester, Hereford, and Gloucester; with those of the duchy of Lancaster and county palatine of Chester. These, under various pretexts, had usurped so extensive a cognizance as to deprive one-third of England of the privileges of the common law. The jurisdiction, however, of the two latter courts in matters touching the king's private estate has not been taken away by the statute. Another act afforded remedy for some abuses in the stannary courts of Cornwall and Devon. Others retrenched the vexatious prerogative of purveyance, and took away that of compulsory knighthood. And one of greater importance put an end to a fruitful source of oppression and complaint by determining forever the extent of royal forests, according to their boundaries in the twentieth year of James, annulling all the perambulations and inquests by which they had subsequently been enlarged.

I must here reckon, among the beneficial acts of this parliament, one that passed some months afterward, after the king's return from Scotland, and perhaps the only measure of that second period on which we can bestow unmixed commendation. The delays and uncertainties of raising troops by voluntary enlistment had led to the usage of pressing soldiers for service, whether in Ireland or on foreign expeditions. This prerogative seeming dangerous and oppressive, as well as of dubious legality, it is recited in the preamble

of an act empowering the king to levy troops by this compulsory method for the special exigency of the Irish rebellion, that, "by the laws of this realm, none of his majesty's subjects ought to be impressed or compelled to go out of his country to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions." The king, in a speech from the throne, adverted to this bill while passing through the houses, as an invasion of his prerogative. This notice of a parliamentary proceeding the commons resented as a breach of their privilege; and having obtained the consent of the lords to a joint remonstrance, the king, who was in no state to maintain his objection, gave his assent to the bill. In the reigns of Elizabeth and James we have seen frequent instances of the crown's interference as to matters debated in parliament. But from the time of the long parliament the law of privilege, in this respect, has stood on an unshaken basis.

These are the principal statutes which we owe to this parliament. They give occasion to two remarks of no slight importance. In the first place, it will appear, on comparing them with our ancient laws and history, that they made scarce any material change in our constitution such as it had been established and recognized under the house of Plantagenet: the law for triennial parliaments even receded from those unrepealed provisions of the reign of Edward III., that they should be assembled annually. The court of star-chamber, if it could be said to have a legal jurisdiction at all, which by that name it had not, traced it only to the Tudor period; its recent excesses were diametrically opposed to the existing laws and the protestations of ancient parliaments. The court of ecclesiastical commission was an offset of the royal supremacy, established at the Reformation. The impositions on merchandise were both plainly illegal, and of no long usage. That of ship-money was flagrantly, and by universal confession, a strain of arbitrary power without pretext of right. Thus, in by far the greater part of the enactments of 1641, the monarchy lost nothing that it had anciently possessed; and the balance of our constitution might seem rather to have been restored to its former equipoise than to have undergone any fresh change.

But those common liberties of England which our forefathers had, with such commendable perseverance, extorted from the grasp of power, though by no means so merely

theoretical and nugatory in effect as some would insinuate, were yet very precarious in the best periods, neither well defined, nor exempt from anomalous exceptions, or from occasional infringements. Some of them, such as the statute for annual sessions of parliament, had gone into disuse. Those that were most evident could not be enforced; and the new tribunals that, whether by law or usurpation, had reared their heads over the people, had made almost all public and personal rights dependent on their arbitrary will. It was necessary, therefore, to infuse new blood into the languid frame, and so to renovate our ancient constitution that the present era should seem almost a new birth of liberty. Such was the aim, especially, of those provisions which placed the return of parliaments at fixed intervals, beyond the power of the crown to elude. It was hoped that by their means, so long as a sense of public spirit should exist in the nation (and beyond that time it is vain to think of liberty), no prince, however able and ambitious, could be free from restraint for more than three years; an interval too short for the completion of arbitrary projects, and which few ministers would venture to employ in such a manner as might expose them to the wrath of parliament.

It is to be observed, in the second place, that by these salutary restrictions, and some new retrenchments of pernicious or abused prerogative, the long parliament formed our constitution such nearly as it now exists. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution; but none of them, perhaps, were strictly necessary for the preservation of our civil and political privileges; and it is rather from 1641, than any other epoch, that we may date their full legal establishment. That single statute which abolished the star-chamber gave every man a security which no other enactment could have afforded, and which no government could essentially impair. Though the reigns of the two latter Stuarts, accordingly, are justly obnoxious, and were marked by several illegal measures, yet, whether we consider the number and magnitude of their transgressions of law, or the practical oppression of their government, these princes fell very short of the despotism that had been exercised, either under the Tudors or the first two of their own family.

From this survey of the good works of the long parliament we must turn our eyes with equal indifference to the opposite picture of its errors and offenses; faults which, though the mischiefs they produced were chiefly temporary, have

yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions. In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary; and that, even when posterity may have cause to rejoice in the ultimate result, the existing generation are seldom compensated for their present loss of tranquillity. The very enemies of this parliament confess that they met in November, 1640, with almost unmingled zeal for the public good, and with loyal attachment to the crown. But they were misled by the excess of two passions—both just and natural in the circumstances wherein they found themselves—resentment and distrust; passions eminently contagious and irresistible when they seize on the zeal and credulity of a popular assembly. The one betrayed them into a measure certainly severe and sanguinary, and in the eyes of posterity exposed to greater reproach than it deserved, the attainder of lord Strafford, and some other proceedings of too much violence; the other gave a color to all their resolutions, and aggravated their differences with the king till there remained no other arbitrator but the sword.

§ 4. Those who know the conduct and character of the earl of Strafford, his abuse of power in the North, his far more outrageous transgressions in Ireland, his dangerous influence over the king's counsels, can not hesitate to admit, if indeed they profess any regard to the constitution of this kingdom, that to bring so great a delinquent to justice according to the known process of law was among the primary duties of the new parliament. It was that which all, with scarce an exception but among his own creatures (for most of the court were openly or in secret his enemies), ardently desired; yet which the king's favor and his own commanding genius must have rendered a doubtful enterprise. He came to London, not unconscious of the danger, by his master's direct injunction. The first days of the session were critical; and any vacillation or delay in the commons might probably have given time for some strong exertion of power to frustrate their designs. We must therefore consider the bold suggestion of Pym, to carry up to the lords an impeachment for high treason against Strafford, not only as a master-stroke of that policy which is fittest for revolutions, but as justifiable by the circumstances wherein they stood. Nothing short of a commitment to the Tower would have broken the spell that so many years of arbitrary dominion had been working.

It was dissipated in the instant that the people saw him in the hands of the usher of the black-rod: and with his power fell also that of his master; so that Charles, from the very hour of Strafford's impeachment, never once ventured to resume the high tone of command congenial to his disposition, or to speak to the commons but as one complaining of a superior force.

The articles of Strafford's impeachment relate principally to his conduct in Ireland. For though he had begun to act with violence in the court of York, as lord-president of the North, and was charged with having procured a commission investing him with exorbitant power, yet he had too soon left that sphere of dominion for the lieutenancy of Ireland to give any wide scope for prosecution. But in Ireland it was sufficiently proved that he had arrogated an authority beyond what the crown had ever lawfully enjoyed, and even beyond the example of former viceroys of that island, where the disordered state of society, the frequency of rebellions, and the distance from all control, had given rise to such a series of arbitrary precedents as would have almost excused any ordinary stretch of power. Notwithstanding this, however, when the managers came to state and substantiate their articles of accusation, though some were satisfied that there was enough to warrant the severest judgment, yet it appeared to many dispassionate men that, even supposing the evidence as to all of them to be legally convincing, they could not, except through a dangerous latitude of construction, be aggravated into treason. The law of England is silent as to conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws and to govern by a standing army, though as infamous as any treason, could be brought within the words of the statute of Edward III., as a compassing of the king's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported, as well as uttered too much in the heat of passion, to furnish a substantive accusation; and I should rather found my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment. The presumption of history, to whose mirror the scattered rays of moral evidence converge, may be irresistible, when

the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this minister appeared so evidently to fall short of high treason, according to the apprehension of that age, as in later times has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of treason by the court, the statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The judges themselves, on a solemn reference by the house of lords for their opinion whether some of the articles charged against Strafford amounted to treason, answered unanimously that, upon all which their lordships had voted to be proved, it was their opinion the earl of Strafford did deserve to undergo the pains and penalties of high treason by law. And, as an apology, at least, for this judicial opinion, it may be remarked that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the peers voted him guilty), does, in fact, approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying war against the king, even without reference to some Irish acts of parliament upon which the managers of the impeachment relied. It can not be extravagant to assert that, if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the statutes, be guilty of the treason called levying war on the king; and that, if we could imagine him to do this by an order from the privy council or the war-office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanor, or felony, according to circumstances; but would want the generality which, as the statute has been construed, determines its character to be treason. It is, however, manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done as to bring it within the line of treason; and the evidence is also open to every sort of legal objection. But in that age the rules of

evidence, so scrupulously defined since, were either very imperfectly recognized, or continually transgressed. If then Strafford could be brought within the letter of the law, and if he were also deserving of death for his misdeeds toward the commonwealth, it might be thought enough to justify his condemnation, although he had not offended against what seemed to be the spirit and intention of the statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly the far more respectable portion of the commons, though only twenty-six peers against nineteen formed the feeble majority on the bill of attainder. It may be observed that the house of commons acted in one respect with a generosity which the crown had never shown in any case of treason, by immediately passing a bill to relieve his children from the penalties of forfeiture and corruption of blood.

Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanors, duly proved on impeachment, must be justly inflicted. "I am still the same," said lord Digby, in his famous speech against the bill of attainder, "in my opinions and affections, as unto the earl of Strafford; I confidently believe him to be the most dangerous minister, the most insupportable to free subjects, that can be charactered. I believe him to be still that grand apostate to the commonwealth, who must not expect to be pardoned in this world till he be dispatched to the other. And yet, let me tell you, Mr. Speaker, my hand must not be to that dispatch." These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known law which neither the court's lust of power nor the clamorous indignation of a popular assembly might turn aside. The king, whose conscience was so deeply wounded by his acquiescence in this minister's death, would gladly have assented to a bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution. Though nothing perhaps could have restored a tolerable degree of confidence

between Charles and the parliament, it is certain that his resentment and aversion were much aggravated by the painful compulsion they had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war.

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of law, as to pass some censure on this deviation from them in the attainder of lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies without paying the forfeit of his offenses against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow-citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their pre-eminence, their fall has been more destructive and their punishment more exemplary. Something beyond the retirement or the dismissal of such ministers has seemed necessary to "absolve the gods," and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. If, then, we blame in some measure the sentence against Strafford, it is not for his sake, but for that of the laws on which he trampled, and of the liberty which he betrayed. He died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the bill of attainder we can not look upon it as a crime.

§ 5. The same distrustful temper, blamable in nothing but its excess, drew the house of commons into a measure more unconstitutional than the attainder of Strafford, the bill enacting that they should not be dissolved without their own consent. Whether or nor this had been previously meditated by the leaders is uncertain; but the circumstances under which it was adopted display all the blind precipitancy of fear. A scheme for bringing up the army from the north of England to overawe parliament had been discoursed of, or rather in a great measure concerted, by some young courtiers and military men. The imperfection and indefiniteness of the evidence obtained respecting this plot increased, as often happens, the apprehensions of the commons. Yet, difficult

as it might be to fix its proper character between a loose project and a deliberate conspiracy, this at least was hardly to be denied, that the king had listened to and approved a proposal of appealing from the representatives of his people to a military force. Their greatest danger was a sudden dissolution. The triennial bill afforded, indeed, a valuable security for the future. Yet, if the present parliament had been broken with any circumstances of violence, it might justly seem very hazardous to confide in the right of spontaneous election reserved to the people by that statute, which the crown would have three years to defeat. A rapid impulse, rather than any concerted resolution, appears to have dictated this hardy encroachment on the prerogative. The bill against the dissolution of the present parliament without its own consent was resolved in a committee on the fifth of May, brought in the next day, and sent to the lords on the seventh. The upper house, in a conference the same day, urged a very wise and constitutional amendment, limiting its duration to the term of two years. But the commons adhering to their original provisions, the bill was passed by both houses on the eighth. Thus, in the space of three days from the first suggestion, an alteration was made in the frame of our polity which rendered the house of commons equally independent of the sovereign and their constituents; and, if it could be supposed capable of being maintained in more tranquil times, would, in the theory at least of speculative politics, have gradually converted the government into something like a Dutch aristocracy.

§ 6. The parliament had met with as ardent and just an indignation against ecclesiastical as temporal grievances. The tyranny, the folly, and rashness of Charles's bishops were still greater than his own. It was evidently an indispensable duty to reduce the overbearing ascendency of that order which had rendered the nation, in regard to spiritual dominion, a great loser by the Reformation. They had been so blindly infatuated as, even in the year 1640, amidst all the perils of the times, to fill up the measure of public wrath by enacting a series of canons in convocation. These enjoined, or at least recommended, some of the modern innovations, which, though many excellent men had been persecuted for want of compliance with them, had not got the sanction of authority. They imposed an oath on the clergy, commonly called the "et cætera oath," binding them to attempt no alteration "in the government of the church by bishops, deans, archdeacons, etc." This oath was by the same authority en-

joined to such of the laity as held ecclesiastical offices. The king, however, on the petition of the council of peers at York, directed it not to be taken. The house of commons rescinded these canons, with some degree of excess on the other side; not only denying the right of convocation to bind the clergy, which had certainly been exercised in all periods, but actually impeaching the bishops for a high misdemeanor on that account. The lords, in the month of March, appointed a committee of ten earls, ten bishops, and ten barons, to report upon the innovations lately brought into the church. Of this committee Williams was chairman. But the spirit which now possessed the commons was not to be exercised by the sacrifice of Laud and Wren, or even by such inconsiderable alterations as the moderate bishops were ready to suggest.

There had always existed a party, though by no means co-extensive with that bearing the general name of puritan, who retained an insuperable aversion to the whole scheme of episcopal discipline, as inconsistent with the ecclesiastical parity they believed to be enjoined by the apostles. It is not easy to determine what proportion these bore to the community. They were certainly at the opening of the parliament by far the less numerous, though an active and increasing party. Few of the house of commons, according to Clarendon and the best contemporary writers, looked to a destruction of the existing hierarchy. The more plausible scheme was one which had the sanction of Usher's learned judgment, and which Williams was said to favor, for what was called a moderate episcopacy; wherein the bishop, reduced to a sort of president of his college of presbyters, and differing from them only in rank, not in order (gradu, non ordine), should act, whether in ordination or jurisdiction, by their concurrence. This intermediate form of church government would probably have contented the popular leaders of the commons, except two or three, and have proved acceptable to the nation. But it was hardly less offensive to the Scottish presbyterians, intolerant of the smallest deviation from their own model, than to the high-church episcopalians; and the necessity of humoring that proud and prejudiced race of people, who began already to show that an alteration in the church of England would be their stipulated condition for any assistance they might afford to the popular party, led the majority of the house of commons to give more countenance than they sincerely intended to a bill preferred by what was then called the root-and-branch party, for the entire abolition of episcopacy. This party, composed chiefly of

presbyterians, but with no small admixture of other sectaries, predominated in the city of London. At the instigation of the Scots commissioners, a petition against episcopal government, with 15,000 signatures, was presented early in the session (Dec. 11, 1640), and received so favorably as to startle those who bore a good affection to the church. This gave rise to the first difference that was expressed in parliament: Digby speaking warmly against the reference of this petition to a committee, and Falkland, though strenuous for reducing the prelates' authority, showing much reluctance to abolish their order. A bill was, however, brought in by sir Edward Dering, an honest but not very enlightened or consistent man, for the utter extirpation of episcopacy, and its second reading carried on a division by 139 to 108. This, no doubt, seems to show the anti-episcopal party to have been stronger than Clarendon admits. Yet I suspect that the greater part of those who voted for it did not intend more than to intimidate the bishops. Petitions, very numerously signed, for the maintenance of episcopal government, were presented from several counties; nor is it, I think, possible to doubt that the nation sought only the abridgment of that coercive jurisdiction and temporal power by which the bishops had forfeited the reverence due to their function, as well as that absolute authority over presbyters, which could not be reconciled to the customs of the primitive church. This was the object both of the act abolishing the high commission, which by the largeness of its expressions seemed to take away all coercive jurisdiction from the ecclesiastical courts, and of that for depriving the bishops of their suffrages among the peers; which, after being once rejected by a large majority of the lords, in June, 1641, passed into a law in the month of February following, and was the latest concession that the king made before his final appeal to arms.

The spirit of ecclesiastical, rather than civil, democracy, was the first sign of the approaching storm that alarmed the Hertfords and Southamptons, the Hydes and Falklands. Full of regard for established law, and disliking the puritan bitterness, aggravated as it was by long persecution, they revolted from the indecent devastation committed in churches by the populace, and from the insults which now fell on the conforming ministers. The lords early distinguished their temper as to those points by an order on the 16th of January for the performance of divine service according to law, in consequence of the tumults that had been caused by the heated puritans under pretense of abolishing innova-

tions. Little regard was shown to this order; but it does not appear that the commons went farther on the opposite side than to direct some ceremonial novelties to be discontinued, and to empower one of their members, sir Robert Harley, to take away all pictures, crosses, and superstitious figures within churches or without.[1] But this order, like many of their other acts, was a manifest encroachment on the executive power of the crown.

§ 7. It seems to have been about the time of the summer recess, during the king's absence in Scotland, that the apprehension of changes in church and state, far beyond what had been dreamed of at the opening of parliament, led to a final schism in the constitutional party. Charles, by abandoning his former advisers, and yielding, with just as much reluctance as displayed the value of the concession, to a series of laws that abridged his prerogative, had recovered a good deal of the affection and confidence of some, and gained from others that sympathy which is seldom withheld from undeserving princes in their humiliation. Though the ill-timed death of the earl of Bedford in May had partly disappointed an intended arrangement for bringing the popular leaders into office, yet the appointments of Essex, Holland, Say, and St. John from that party, were apparently pledges of the king's willingness to select his advisers from their ranks; whatever cause there might be to suspect that their real influence over him would be too inconsiderable. Those who were still excluded, and who distrusted the king's intentions as well toward themselves as the public cause, of whom Pym and Hampden, with the assistance of St. John, though actually solicitor-general, were the chief, found no better means of keeping alive the animosity that was beginning to subside, than by framing the Remonstrance on the state of the kingdom, presented to the king in November, 1641. This being a recapitulation of all the grievances and misgovernment that had existed since his accession, which his acquiescence in so many measures of redress ought, according to the common courtesy due to sovereigns, to have canceled, was hardly capable of answering any other purpose than that of reanimating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope, from Charles's proud and hasty temper, that he would reply in such a tone as would more exasper-

[1] By the hands of this zealous knight fell the beautiful crosses at Charing and Cheap, to the lasting regret of all faithful lovers of antiquities and architecture.

ate the commons. But he had begun to use the advice of judicious men, Falkland, Hyde, and Colepepper, and reined in his natural violence so as to give his enemies no advantage over him.

The jealousy which nations ought never to lay aside was especially required toward Charles, whose love of arbitrary dominion was much better proved than his sincerity in relinquishing it. But if he were intended to reign at all, and to reign with any portion either of the prerogatives of an English king, or the respect claimed by every sovereign, the Remonstrance of the commons could but prolong an irritation incompatible with public tranquillity. It admits, indeed, of no question, that the schemes of Pym, Hampden, and St. John, already tended to restrain the king's personal exercise of any effective power, from a sincere persuasion that no confidence could ever be placed in him, though not to abolish the monarchy, or probably to abridge in the same degree the rights of his successor. Their Remonstrance was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the farther progress of their endeavors, but, as they would allege, might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty. It was carried in a full house by the small majority of 159 to 148. So much was it deemed a trial of strength, that Cromwell declared after the division that, had the question been lost, he would have sold his estate, and retired to America.

§ 8. It may be thought rather surprising that, with a house of commons so nearly balanced as they appear on this vote, the king should have new demands that annihilated his authority made upon him, and have found a greater majority than had voted the Remonstrance ready to oppose him by arms; especially as that paper contained little but what was true, and might rather be censured as an ill-timed provocation than an encroachment on the constitutional prerogative. But there were circumstances, both of infelicity and misconduct, which aggravated that distrust whereon every measure hostile to him was grounded. His imprudent connivance at popery, and the far more reprehensible encouragement given to it by his court, had sunk deep in the hearts of his people. His ill-wishers knew how to irritate the characteristic sensibility of the English on this topic. The queen, unpopular on the score of her imputed arbitrary counsels, was odious as a maintainer of idolatry. The lenity shown to convicted popish priests, who, though liable to capital punishment, had

been suffered to escape with sometimes a very short imprisonment, was naturally (according to the maxims of those times) treated as a grievance by the commons, who petitioned for the execution of one Goodman and others in similar circumstances, perhaps in the hope that the king would attempt to shelter them. But he dexterously left it to the house whether they should die or not; and none of them actually suffered. Rumors of pretended conspiracies by the catholics were perpetually in circulation, and rather unworthily encouraged by the chiefs of the commons. More substantial motives for alarm appeared to arise from the obscure transaction in Scotland, commonly called the Incident, which looked so like a concerted design against the two great leaders of the constitutional party, Hamilton and Argyle, that it was not unnatural to anticipate something similar in England. In the midst of these apprehensions, as if to justify every suspicion and every severity, burst out the Irish rebellion, with its attendant massacre. Though nothing could be more unlikely in itself, or less supported by proof, than the king's connivance at this calamity, from which every man of common understanding could only expect, what actually resulted from it, a terrible aggravation of his difficulties, yet, with that distrustful temper of the English, and their jealous dread of popery, he was never able to conquer their suspicions that he had either instigated the rebellion, or was very little solicitous to suppress it.

It was, perhaps, hardly practicable for the king, had he given less real excuse for it than he did, to lull that disquietude which so many causes operated to excite. The most circumspect discretion of a prince in such a difficult posture can not restrain the rashness of eager adherents, or silence the murmurs of a discontented court. Those nearest Charles's person, and who always possessed too much of his confidence, were notoriously and naturally averse to the recent changes. Their threatening but idle speeches, and impotent denunciations of resentment, conveyed with malignant exaggeration among the populace, provoked those tumultuous assemblages which afforded the king no bad pretext for withdrawing himself from a capital where his personal dignity was so little respected. It is impossible, however, to deny that he gave by his own conduct no trifling reasons for suspicion, and last of all by the appointment of Lunsford to the government of the Tower; a choice for which, as it would never have been made from good motives, it was natural to seek the worst. But the single false step which rendered his affairs irretriev-

able by any thing short of civil war, and placed all reconciliation at an insuperable distance, was his attempt to seize the five members within the walls of the house; an evident violation, not of common privilege, but of all security for the independent existence of parliament in the mode of its execution, and leading to a very natural though perhaps mistaken surmise, that the charge itself of high treason made against these distinguished leaders, without communicating any of its grounds, had no other foundation than their parliamentary conduct. And we are in fact warranted by the authority of the queen herself to assert that their aim in this most secret enterprise was to strike terror into the parliament, and regain the power that had been wrested from their grasp. It is unnecessary to dwell on a measure so well known, and which scarce any of the king's advocates have defended. The only material subject it affords for reflection is, how far the manifest hostility of Charles to the popular chiefs might justify them in rendering it harmless by wresting the sword out of his hands. It is observed by Clarendon that "Mr. Hampden was much altered after this accusation; his nature and courage seeming much fiercer than before." And it is certain that both he and Mr. Pym were not only most forward in the proceedings which brought on the war, but among the most implacable opponents of all overtures toward reconciliation; so that, although, both dying in 1643, we can not pronounce with absolute certainty as to their views, there can be little room to doubt that they would have adhered to the side of Cromwell and St. John, in the great separation of the parliamentary party.

§ 9. The noble historian confesses that not Hampden alone, but the generality of those who were beginning to judge more favorably of the king, had their inclinations alienated by this fatal act of violence. It is worthy of remark that each of the two most striking encroachments on the king's prerogative sprang directly from the suspicions roused of an intention to destroy their privileges: the bill perpetuating the parliament having been hastily passed on the discovery of Percy's and Jermyn's conspiracy, and the present attempt on the five members inducing the commons to insist peremptorily on vesting the command of the militia in persons of their own nomination: a security, indeed, at which they had been less openly aiming from the time of that conspiracy, and particularly of late. Every one knows that this was the grand question upon which the quarrel finally rested; but it may be satisfactory to show, more precisely than our

historians have generally done, what was meant by the power of the militia, and what was the exact ground of dispute in this respect between Charles I. and his parliament.

§ 10. The military force which our ancient constitution had placed in the hands of its chief magistrate and those deriving authority from him, may be classed under two descriptions; one principally designed to maintain the king's and the nation's rights abroad, the other to protect them at home from attack or disturbance. The first comprehends the tenures by knight's service, which, according to the constant principles of a feudal monarchy, bound the owners of lands, thus held from the crown, to attend the king in war, within or without the realm, mounted and armed, during the regular term of service. Their own vassals were obliged by the same law to accompany them. But the feudal service was limited to forty days, beyond which time they could be retained only by their own consent, and at the king's expense. The military tenants were frequently called upon in expeditions against Scotland, and last of all in that of 1640; but the short duration of their legal service rendered it, of course, nearly useless in continental warfare. Even when they formed the battle, or line of heavy-armed cavalry, it was necessary to complete the army by recruits of foot-soldiers, whom feudal tenure did not regularly supply, and whose importance was soon made sensible by their skill in our national weapon, the bow. What was the extent of the king's lawful prerogative for two centuries or more after the Conquest, as to compelling any of his subjects to serve him in foreign war, independently of the obligations of tenure, is a question scarcely to be answered. But Edward III., on the petition of his first parliament, who judged that compulsory service either was, or ought to be, rendered illegal, passed a remarkable act, with the simple brevity of those times: "That no man from henceforth should be charged to arm himself, otherwise than he was wont in the time of his progenitors, the kings of England; and that no man be compelled to go out of his shire, but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defense of the realm."

This statute, by no means of inconsiderable importance in our constitutional history, put a stop for some ages to these arbitrary conscriptions. But Edward had recourse to another means of levying men without his own cost, by calling on the counties and principal towns to furnish a certain num-

ber of troops. Against this the parliament provided a remedy by an act in the twenty-fifth year of his reign: "That no man shall be constrained to find men at arms, hobblers, nor archers, other than those who hold by such service, if it be not by common consent and grant in parliament."

The successful resistance thus made by parliament appears to have produced the discontinuance of compulsory levies for foreign warfare. Edward III. and his successors, in their long contention with France, resorted to the mode of recruiting by contracts with men of high rank or military estimation, whose influence was greater probably than that of the crown toward procuring voluntary enlistments. The pay of soldiers, which we find stipulated in such of those contracts as are extant, was extremely high; but it secured the service of a brave and vigorous yeomanry.

It is scarcely perhaps necessary to observe that there had never been any regular army kept up in England. Henry VII. established the yeomen of the guard in 1485, solely for the defense of his person, and rather perhaps, even at that time, to be considered as the king's domestic servants than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defense—the Tower of London, Portsmouth, the castle of Dover, the fort of Tilbury, and, before the union of the crowns, Berwick and some other places on the Scottish border. But their whole number must have been insignificant, and probably at no time equal to resist any serious attack.

We must take care not to confound this strictly military force, serving, whether by virtue of tenure or engagement, wheresoever it should be called, with that of a more domestic and defensive character to which alone the name of militia was usually applied. By the Anglo-Saxon laws, or rather by one of the primary and indispensable conditions of political society, every freeholder, if not every freeman, was bound to defend his country against hostile invasion. It appears that the alderman or earl, while those titles continued to imply the government of a county, was the proper commander of this militia. Henry II., in order to render it more effective in cases of emergency, and perhaps with a view to extend its service, enacted, by consent of parliament, that every freeman, according to the value of his estate or movables, should hold himself constantly furnished with suitable arms and

equipments. By the statute of Winchester, in the 13th year of Edward I., these provisions were enforced and extended. Every man between the ages of fifteen and sixty was to be assessed, and sworn to keep armor according to the value of his lands and goods; for fifteen pounds and upward in rent, or forty marks in goods, a hauberk, an iron breastplate, a sword, a knife, and a horse; for smaller property, less extensive arms. A view of this armor was to be taken twice in the year by constables chosen in every hundred. The sheriff, as chief conservator of public peace and minister of the law, had always possessed the right of summoning the posse comitatûs; that is, of calling on all the king's liege subjects within his jurisdiction for assistance, in case of any rebellion or tumultuous rising, or when bands of robbers infested the public ways, or when, as occurred very frequently, the execution of legal process was forcibly obstructed. The provisions, however, of the statute of Winchester, so far as they obliged every proprietor to possess suitable arms, were of course applicable to national defense. In seasons of public danger, threatening invasion from the side of Scotland or France, it became customary to issue commissions of array, empowering those to whom they were addressed to muster and train all men capable of bearing arms in the counties to which their commission extended, and hold them in readiness to defend the kingdom. The earliest of these commissions that I find in Rymer is of 1324, and the latest of 1557.

The obligation of keeping sufficient arms according to each man's estate was preserved by a statute of Philip and Mary, which made some changes in the rate and proportion as well as the kind of arms. But these ancient provisions were abrogated by James in his first parliament. The nation, become forever secure from invasion on the quarter where the militia service had been most required, and freed from the other dangers which had menaced the throne of Elizabeth, gladly saw itself released from an expensive obligation. The government again may be presumed to have thought that weapons of offense were safer in its hands than in those of its subjects. Magazines of arms were formed in different places, and generally in each county: but, if we may reason from the absence of documents, there was little regard to military array and preparation; save that the citizens of London mustered their trained bands on holidays, an institution that is said to have sprung out of a voluntary association, called the Artillery Company, formed in the reign of Henry VIII. for the encouragement of archery, and acquiring a more re-

spectable and martial character at the time of the Spanish Armada.

The power of calling to arms, and mustering the population of each county, given in earlier times to the sheriff or justices of the peace, or to special commissioners of array, began to be intrusted, in the reign of Mary, to a new officer, entitled the lord-lieutenant. This was usually a peer, or at least a gentleman of large estate within the county, whose office gave him the command of the militia, and rendered him the chief vice-regent of his sovereign, responsible for the maintenance of public order. This institution may be considered as a revival of the ancient local earldom; and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the discontinuance of that office. Yet the lord-lieutenant has so peculiarly military an authority, that it does not in any degree control the civil power of the sheriff as the executive minister of the law. In certain cases, such as a tumultuous obstruction of legal authority, each might be said to possess an equal power; the sheriff being still undoubtedly competent to call out the posse comitatûs in order to enforce obedience. Practically, however, in all serious circumstances, the lord-lieutenant has always been reckoned the efficient and responsible guardian of public tranquillity.

From an attentive consideration of this sketch of our military law, it will strike the reader that the principal question to be determined was, whether, in time of peace, without pretext of danger of invasion, there were any legal authority that could direct the mustering and training to arms of the able-bodied men in each county, usually denominated the militia. If the power existed at all, it manifestly resided in the king. The notion that either or both houses of parliament, who possess no portion of executive authority, could take on themselves one of its most peculiar and important functions, was so preposterous that we can scarcely give credit to the sincerity of any reasonable person who advanced it. In the imminent peril of hostile invasion, in the case of intestine rebellion, there seems to be no room for doubt that the king, who could call on his subjects to bear arms for their country and laws, could oblige them to that necessary discipline and previous training, without which their service would be unavailing. It might also be urged that he was the proper judge of the danger. But that, in a season of undeniable tranquillity, he could withdraw his subjects from their necessary labors against their consent,

even for the important end of keeping up the use of military discipline, is what, with our present sense of the limitations of royal power, it might be difficult to affirm. There were so many points uncertain, and some wherein the prerogative was plainly deficient, such as the right of marching the militia out of their own counties, taken away, if it had before existed, by the act just passed against pressing soldiers, that the concurrence of the whole legislature seemed requisite to place so essential a matter as the public defense on a secure and permanent footing.

§ 11. The aim of the houses, however, in the bill for regulating the militia, presented to Charles in February, 1642, and his refusal to pass which led by rapid steps to the civil war, was not so much to remove those uncertainties by a general provision (for in effect they left them much as before), as to place the command of the sword in the hands of those they could control; nominating in the bill the lords-lieutenant of every county, who were to obey the orders of the two houses, and to be irremovable by the king for two years. No one can pretend that this was not an encroachment on his prerogative. It can only find a justification in the precarious condition, as the commons asserted it to be, of those liberties they had so recently obtained, in their just persuasion of the king's insincerity, and in the demonstrations he had already made of an intention to win back his authority at the sword's point. But it is equitable, on the other hand, to observe that the commons had by no means greater reason to distrust the faith of Charles, than he had to anticipate fresh assaults from them on the power he had inherited, on the form of religion which alone he thought lawful, on the counselors who had served him most faithfully, and on the nearest of his domestic ties. If the right of self-defense could be urged by parliament for this demand of the militia, must we not admit that a similar plea was equally valid for the king's refusal? However arbitrary and violent the previous government of Charles may have been, however disputable his sincerity at present, it is vain to deny that he had made the most valuable concessions, and such as had cost him very dear. He had torn away from his diadem what all monarchs would deem its choicest jewel—that high attribute of uncontrollable power, by which their flatterers have in all ages told them they resemble and represent the Divinity. He had seen those whose counsels he had best approved rewarded with exile or imprisonment, and had incurred the deep reproach of his own heart by the sacrifice of

Strafford. He had just now given a reluctant assent to the extinction of one estate of parliament, by the bill excluding bishops from the house of peers. Even in this business of the militia he would have consented to nominate the persons recommended to him as lieutenants, by commissions revocable at his pleasure; or would have passed the bill rendering them irremovable for one year, provided they might receive their orders from himself and the two houses jointly. It was not unreasonable for the king to pause at the critical moment which was to make all future denial nugatory, and inquire whether the prevailing majority designed to leave him what they had not taken away. But he was not long kept in uncertainty upon this score.

§ 12. The nineteen propositions tendered to him at York in the beginning of June, went to abrogate in spirit the whole existing constitution, and were in truth so far beyond what the king could be expected to grant, that terms more intolerable were scarcely proposed to him in his greatest difficulties, not at Uxbridge, nor at Newcastle, nor even at Newport. These famous propositions import that the privy council and officers of state should be approved by parliament, and take such an oath as the two houses should prescribe; that during the intervals of parliament no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers be taken away; the church government and liturgy be reformed as both houses should advise; the militia and all fortified places put in such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers to be made in future from sitting in parliament, unless they be admitted with the consent of both houses. A few more laudable provisions, such as that the judges should hold their offices during good behavior, which the king had long since promised, were mixed up with these strange demands. Even had the king complied with such unconstitutional requisitions, there was one behind which, though they had not advanced it on this occasion, was not likely to be forgotten. It had been asserted by the house of commons in their last remonstrance, that, on the right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer.

§ 13. In weighing the merits of this grand contest, in judging whether a thoroughly upright and enlightened man

would rather have listed under the royal or parliamentary standard, there are two political postulates, the concession of which we may require: one, that civil war is such a calamity as nothing but the most indispensable necessity can authorize any party to bring on; the other, that the mixed government of England by king, lords, and commons, was to be maintained in preference to any other form of polity. The first of these can hardly be disputed; and though the denial of the second would certainly involve no absurdity, yet it may justly be assumed where both parties avowed their adherence to it as a common principle. Such as prefer a despotic or a republican form of government will generally, without much further inquiry, have made their election between Charles I. and the parliament. We do not argue from the creed of the English constitution to those who have abandoned its communion.

There was so much in the conduct and circumstances of both parties in the year 1642 to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. On the one hand, he would entertain little doubt of the king's desire to overthrow by force or stratagem whatever had been effected in parliament, and to establish a plenary despotism; his arbitrary temper, his known principles of government, the natural sense of wounded pride and honor, the instigations of a haughty woman, the solicitations of favorites, the promises of ambitious men, were all at work to render his new position as a constitutional sovereign, even if unaccompanied by fresh indignities and encroachments, too grievous and mortifying to be endured. He had already tampered in a conspiracy to overawe, if not to disperse, the parliament: he had probably obtained large promises, though very little to be trusted, from several of the presbyterian leaders in Scotland during his residence there in the summer of 1641: he had attempted to recover his ascendency by a sudden blow in the affair of the five members; he had sent the queen out of England, furnished with the crown-jewels, for no other probable end than to raise men and procure arms in foreign countries: he was now about to take the field with an army, composed in part of young gentlemen disdainful of a puritan faction that censured their license, and of those soldiers of fortune, reckless of public principle, and averse to civil control, whom the war in Germany had trained; in part of the catholics, a wealthy and active body, devoted to the crown, from which alone they had experienced justice or humanity, and from whose favor and gratitude they now expected the most splendid returns.

But, on the other hand, the house of commons presented still less favorable prospects. After every allowance has been made, he must bring very heated passions to the records of those times who does not perceive in the conduct of that body a series of glaring violations, not only of positive and constitutional, but of those higher principles which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both houses in August, 1641, and that in November, authorizing the earl of Leicester to raise men for the defense of Ireland without warrant under the great seal, both manifest encroachments on the executive power; and the enormous extension of privilege, under which every person accused on the slightest testimony of disparaging their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognizance, was dragged before them as a delinquent, and lodged in their prison. Witness the outrageous attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterward of sir Ralph Hopton to the Tower, for such language used in debate as would not have excited any observation in ordinary times; their continual encroachments on the rights and privileges of the lords, as in their intimation that if bills thought by them necessary for the public good should fall in the upper house, they must join with the minority of the lords in representing the same to the king; or in the impeachment of the duke of Richmond for words, and those of the most trifling nature, spoken in the upper house; their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established constitution; while they encouraged those of a tumultuous multitude at their bar in favor of innovation; their usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property. Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the house of lords during their compelled absence through fear of the populace; a protest not perhaps entirely well expressed, but abundantly justifiable in its argument by the plainest principles of law. These great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to

support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe perhaps, but far more sweeping, than that which had rendered the star-chamber odious.

Thus, with evil auspices, with much peril of despotism on the one hand, with more of anarchy on the other, amidst the apprehensions and sorrows of good men, the civil war commenced in the summer of 1642. I might now perhaps pass over the period that intervened, until the restoration of Charles II., as not strictly belonging to a work which undertakes to relate the progress of the English constitution. But this would have left a sort of chasm that might disappoint the reader; and as I have already not wholly excluded our more general political history, without a knowledge of which the laws and government of any people must be unintelligible, it will probably not be deemed an unnecessary digression, if I devote one chapter to the most interesting and remarkable portion of British story.

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO THE RESTORATION.

PART I.

§ 1. Success of the King in the first part of the War. § 2. Efforts by the Moderate Party for Peace. Affair at Brentford. § 3. Treaty of Oxford. § 4. Impeachment of the Queen. § 5. Waller's Plot. § 6. Secession of some Peers to the King's Quarters. Their Treatment there impolitic. § 7. The Anti-pacific Party gain the ascendant at Westminster. § 8. The Parliament makes a new Great Seal. § 9. And takes the Covenant. § 10. Persecution of the Clergy who refuse it. § 11. Impeachment and Execution of Laud. § 12. Decline of the King's Affairs in 1644. § 13. Factions at Oxford. § 14. Royalist Lords and Commoners summoned to that City. Treaty of Uxbridge. Impossibility of Agreement. § 15. Miseries of the War. § 16. Essex and Manchester suspected of Lukewarmness. § 17. Self-denying Ordinance. § 18. Battle of Naseby. Desperate condition of the King's Affairs. He throws himself into the hands of the Scots. § 19. His Struggles to preserve Episcopacy, against the advice of the Queen and others. Bad Conduct of the Queen. § 20. Publication of Letters taken at Naseby. § 21. Discovery of Glamorgan's Treaty. § 22. King delivered up by the Scots. § 23. Growth of the Independents and Republicans. Opposition to the Presbyterian Government. Toleration. § 24. Intrigues of the Army with the King. His Person seized. § 25. The Parliament yield to the Army. § 26. Mysterious Conduct of Cromwell. § 27. Imprudent Hopes of the King. He rejects the Proposals of the Army. § 28. His Flight from Hampton Court. Alarming Votes against him. § 29. Scots' Invasion. The Presbyterians regain the Ascendant. § 30. Treaty of Newport. § 31. Gradual Progress of a Republican Party. § 32. Scheme among the Officers of bringing Charles to Trial. This is finally determined. Seclusion of Presbyterian Members. § 33. Motives of some of the King's judges. § 34. Question of his Execution discussed. § 35. His Character. § 36. Icon Basiliké.

§ 1. FACTIONS that, while still under some restraint from the forms at least of constitutional law, excite our disgust by their selfishness or intemperance, are little likely to redeem their honor when their animosities have kindled civil warfare. If it were difficult for an upright man to enlist with an entire willingness under either the royalist or the parliamentarian banner at the commencement of hostilities in 1642, it became far less easy for him to desire the complete success of one or the other cause, as advancing time displayed the faults of both in darker colors than they had previously worn. Of the parliament — to begin with the more powerful and victorious party — it may be said, I think, with not greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are recorded of them from their quarrel with the king to their expulsion by Cromwell.

Notwithstanding the secession from parliament before the commencement of the war of nearly all the peers who could be reckoned on the king's side, and of a pretty considerable part of the commons, there still continued to sit at Westminster many sensible and moderate persons, who thought that they could not serve their country better than by remaining at their posts, and labored continually to bring about a pacification by mutual concessions. Such were the earls of Northumberland, Holland, Lincoln, and Bedford, among the peers; Selden, Whitelock, Hollis, Waller, Pierpoint, and Rudyard, in the commons. These, however, would have formed but a very ineffectual minority if the war itself, for at least twelve months, had not taken a turn little expected by the parliament. The hard usage Charles seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy, accustomed to respect the established laws, and to love monarchy, as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society. Their zeal placed the king at the head of a far more considerable army than either party had anticipated. In the first battle, that of Edgehill, though he did not remain master of the field, yet all the military consequences were evidently in his favor. In the ensuing campaign of 1643, the advantage was for several months entirely his own, nor could he be said to be a loser on the whole result, notwithstanding some reverses that accompanied the autumn. A line drawn from Hull to Southampton would suggest no very incorrect idea of the two parties, considered as to their military occupation of the kingdom, at the beginning of September, 1643; for if the parliament, by the possession of Gloucester and Plymouth, and by some force they had on foot in Cheshire and other midland parts, kept their ground on the west of this line, this was nearly compensated by the earl of Newcastle's possession at that time of most of Lincolnshire, which lay within it. Such was the temporary effect, partly indeed of what may be called the fortune of war, but rather of the zeal and spirit of the royalists, and of their advantage in a more numerous and intrepid cavalry.

§ 2. It was natural that the moderate party in parliament should acquire strength by the untoward fortune of its arms. Their aim, as well as that of the constitutional royalists, was a speedy pacification. On the king's advance to Colnbrook,

in November, 1642, the two houses made an overture for negotiation, on which he expressed his readiness to enter. But, during the parley, some of his troops advanced to Brentford, and a sharp action took place in that town. The parliament affected to consider this such a mark of perfidy and blood-thirstiness as justified them in breaking off the treaty, a step to which they were doubtless more inclined by the king's retreat, and their discovery that his army was less formidable than they had apprehended. It is very probable, or rather certain, even from Clarendon's account, that many about the king, if not himself, were sufficiently indisposed to negotiate; yet, as no cessation of arms had been agreed upon, or even proposed, he can not be said to have waived the unquestionable right of every belligerent to obtain all possible advantage by arms, in order to treat for peace in a more favorable position. But, as mankind are seldom reasonable in admitting such maxims against themselves, he seems to have injured his reputation by this affair of Brentford.

§ 3. A treaty, from which many ventured to hope much, was begun early in the next spring at Oxford, after a struggle which had lasted through the winter within the walls of parliament. But though the party of Pym and Hampden at Westminster were not able to prevent negotiation against the strong bent of the house of lords, and even of the city, which had been taught to lower its tone by the interruption of trade, and especially of the supply of coals from Newcastle, yet they were powerful enough to make the houses insist on terms not less unreasonable than those contained in their nineteen propositions the year before. The king could not be justly expected to comply with these; but, had they been more moderate, or if the parliament would have in some measure receded from them, we have every reason to conclude, both by the nature of the terms he proposed in return, and by the positive testimony of Clarendon, that he would not have come sincerely into any scheme of immediate accommodation. The reason assigned by that author for the unwillingness of Charles to agree on a cessation of arms during the negotiation, though it had been originally suggested by himself (and which reason would have been still more applicable to a treaty of peace), is one so strange that it requires all the authority of one very unwilling to confess any weakness or duplicity of the king to be believed. He had made a solemn promise to the queen on her departure for Holland the year before, "that he would receive no person who had disserved him into any favor or trust, without her

privity and consent; and that, as she had undergone many reproaches and calumnies at the entrance into the war, so he would never make any peace but by her interposition and mediation, that the kingdom might receive that blessing only from her." Let this be called, as the reader may please, the extravagance of romantic affection, or rather the height of pusillanimous and criminal subserviency, we can not surely help acknowledging that this one marked weakness in Charles's character, had there been nothing else to object, rendered the return of cordial harmony between himself and his people scarce within the bounds of natural possibility.

§ 4. Though this particular instance of the queen's prodigious ascendency over her husband remained secret till the publication of lord Clarendon's life, it was in general well known, and put the leaders of the commons on a remarkable stroke of policy, in order to prevent the renewal of negotiations. On her landing in the north, with a supply of money and arms, as well as with a few troops she had collected in Holland, they carried up to the lords an impeachment for high treason against her. This measure (so obnoxious was Henrietta) met with a less vigorous opposition than might be expected, though the moderate party was still in considerable force. It was not only an insolence which a king, less uxorious than Charles, could never pardon, but a violation of the primary laws and moral sentiments that preserve human society, to which the queen was acting in obedience. Scarce any proceeding of the long parliament seems more odious than this; whether designed by way of intimidation, or to exasperate the king, and render the composure of existing differences more impracticable.

§ 5. The enemies of peace were strengthened by the discovery of what is usually called Waller's plot, a scheme for making a strong demonstration of the royalist party in London, wherein several members of both houses appear to have been more or less concerned. Upon the detection of this conspiracy, the two houses of parliament took an oath not to lay down arms so long as the papists now in arms should be protected from the justice of parliament, and never to adhere to, or willingly assist, the forces raised by the king, without the consent of both houses. Every individual member of the peers and commons took this oath; some of them being then in secret concert with the king, and others entertaining intentions, as their conduct very soon evinced, of deserting to his side. Such was the commencement of a sys-

tem of perjury, which lasted for many years, and belies the pretended religion of that hypocritical age.

§ 6. The king was now in a course of success, which made him rather hearken to the sanguine courtiers of Oxford, where, according to the invariable character of an exiled faction, every advantage or reverse brought on a disproportionate exultation or despondency, than to those better counselors who knew the precariousness of his good fortune. He published a declaration, wherein he denied the two houses at Westminster the name of a parliament; which he could no more take from them, after the bill he had passed, than they could deprive him of his royal title, and by refusing which he shut up all avenues to an equal peace. This was soon followed by so extraordinary a political error as manifests the king's want of judgment, and the utter improbability that any event of the war could have restored to England the blessings of liberty and repose. Three peers of the moderate party, the earls of Holland, Bedford, and Clare, dissatisfied with the preponderance of a violent faction in the commons, left their places at Westminster, and came into the king's quarters. It might be presumed, from general policy as well as from his constant declarations of a desire to restore peace, that they would have been received with such studied courtesy as might serve to reconcile to their own mind a step which, when taken with the best intentions, is always equivocal and humiliating. There was great reason to believe that the earl of Northumberland, not only the first peer then in England as to family and fortune, but a man highly esteemed for prudence, was only waiting to observe the reception of those who went first to Oxford before he followed their steps. There were even well-founded hopes of the earl of Essex, who, though incapable of betraying his trust as commander of the parliament's army, was, both from personal and public motives, disinclined to the war party in the commons. There was much to expect from all those who had secretly wished well to the king's cause, and from those whom it is madness to reject or insult, the followers of fortune, the worshipers of power, without whom neither fortune nor power can long subsist. Yet such was the state of Charles's council-board at Oxford, that some were for arresting these proselyte earls; and it was carried with difficulty, after they had been detained some time at Wallingford, that they might come to the court. But they met there with so many and such general slights, that, though they fought in the king's army at Newbury, they found their position intolerably ignominious, and,

after about three months, returned to the parliament with many expressions of repentance, and strong testimonies to the evil counsels of Oxford.

§ 7. Both parties showed an adverseness to all overtures for peace. On the news that prince Rupert had taken Bristol, the last and most serious loss that the parliament sustained, the lôrds agreed on propositions for peace to be sent to the king, of an unusually moderate tone. The commons, on a division of 94 to 65, determined to take them into consideration; but the lord mayor Pennington having procured an address of the city against peace, backed by a tumultuous mob, a small majority was obtained against concurring with the other house. It was after this, that the lords above mentioned, as well as many of the commons, quitted Westminster. The prevailing party had no thoughts of peace till they could dictate its conditions. Through Essex's great success in raising the siege of Gloucester, the most distinguished exploit in his military life, and the battle of Newbury, wherein the advantage was certainly theirs, they became secure against any important attack on the king's side, the war turning again to endless sieges and skirmishes of partisans. And they now adopted two important measures, one of which gave a new complexion to the quarrel.

§ 8. Littleton, the lord-keeper of the great seal, had carried it away with him to the king. This of itself put a stop to the regular course of the executive government, and to the administration of justice within the parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the great seal. It must surely excite a smile, that men who had raised armies, and fought battles against the king, should be perplexed how to get over so technical a difficulty. But the great seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of royal authority in a higher degree than the person of the king. The commons prepared an ordinance in July for making a new great seal, in which the lords could not be induced to concur till October. The royalists, and the king himself, exclaimed against this as the most audacious treason, though it may be reckoned a very natural consequence of the state in which the parliament was placed.

§ 9. The second measure of parliament was of greater moment and more fatal consequences. I have already mentioned the stress laid by the bigoted Scots presbyterians on the

establishment of their own church government in England. Chiefly perhaps to conciliate this people, the house of commons had entertained the bill for abolishing episcopacy; and this had formed a part of the nineteen propositions that both houses tendered to the king. After the action at Brentford they concurred in a declaration to be delivered to the Scots commissioners, resident in London, wherein, after setting forth the malice of the prelatical clergy in hindering the reformation of ecclesiastical government, and professing their own desire willingly and affectionately to pursue a closer union in such matters between the two nations, they request their brethren of Scotland to raise such forces as they should judge sufficient for the securing the peace of their own borders against ill-affected persons there; as likewise to assist them in suppressing the army of papists and foreigners which, it was expected, would shortly be on foot in England.

This overture produced for many months no sensible effect. The Scots, with all their national wariness, suspected that, in spite of these general declarations in favor of their church polity, it was not much at heart with most of the parliament, and might be given up in a treaty, if the king would concede some other matters in dispute. Accordingly, when the progress of his arms, especially in the north, during the ensuing summer, compelled the parliament to call in a more pressing manner, and by a special embassy, for their aid, they resolved to bind them down by such a compact as no wavering policy should ever rescind. They insisted, therefore, on the adoption of the solemn league and covenant, founded on a similar association of their own five years before, through which they had successfully resisted the king and overthrown the prelatic government. The covenant consisted in an oath to be subscribed by all sorts of persons in both kingdoms, whereby they bound themselves to preserve the reformed religion in the church of Scotland, in doctrine, worship, discipline, and government, according to the word of God, and practice of the best reformed churches; and to endeavor to bring the churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church government, directory for worship, and catechising; to endeavor, without respect of persons, the extirpation of popery, prelacy (that is, church government by archbishops, bishops, their chancellors, and commissaries, deans and chapters, archdeacons, and all other ecclesiastical officers depending on that hierarchy), and whatsoever should

be found contrary to sound doctrine and the power of godliness; to preserve the rights and privileges of the parliaments and the liberties of the kingdoms, and the king's person and authority, in the preservation and defense of the true religion and liberties of the kingdoms; to endeavor the discovery of incendiaries and malignants, who hinder the reformation of religion, and divide the king from his people, that they may be brought to punishment; finally, to assist and defend all such as should enter into this covenant and not suffer themselves to be withdrawn from it, whether to revolt to the opposite party, or to give in to a detestable indifference or neutrality. In conformity to the strict alliance thus established between the two kingdoms, the Scots commissioners at Westminster were intrusted jointly with a committee of both houses, with very extensive powers to administer the public affairs.

Every member of the commons who remained at Westminster, to the number of 228, or perhaps more, and from 20 to 30 peers that formed their upper house, subscribed this deliberate pledge to overturn the established church; many of them with extreme reluctance, both from a dislike of the innovation, and from a consciousness that it raised a most formidable obstacle to the restoration of peace; but with a secret reserve, for which some want of precision in the language of this covenant (purposely introduced by Vane, as is said, to shelter his own schemes) afforded them a sort of apology. It was next imposed on all civil and military officers, and upon all the beneficed clergy.

§ 10. A severe persecution fell on the faithful children of the Anglican church. Many had already been sequestered from their livings, or even subjected to imprisonment, by the parliamentary committee for scandalous ministers, or by subordinate committees of the same kind set up in each county within their quarters; sometimes on the score of immoralities or false doctrine, more frequently for what they termed malignity, or attachment to the king and his party. Yet wary men, who meddled not with politics, might hope to elude this inquisition. But the covenant, imposed as a general test, drove out all who were too conscientious to pledge themselves by a solemn appeal to the Deity to resist the polity which they generally believed to be of his institution. What number of the clergy were ejected (most of them but for refusing the covenant, and for no moral offense or imputed superstition) it is impossible to ascertain. Walker, in his "Sufferings of the Clergy," a folio volume published in

the latter end of Anne's reign, with all the virulence and partiality of the high-church faction in that age, endeavored to support those who had reckoned it at 8000; a palpable overstatement upon his own showing, for he can not produce near 2000 names after a most diligent investigation. Neal, however, admits 1600, probably more than one-fifth of the beneficed ministers in the kingdom. The biographical collections furnish a pretty copious martyrology of men the most distinguished by their learning and virtues in that age. The remorseless and indiscriminate bigotry of presbyterianism might boast that it had heaped disgrace on Walton, and driven Lydiat to beggary; that it trampled on the old age of Hales, and imbittered with insult the dying moments of Chillingworth.

§ 11. But the most unjustifiable act of these zealots, and one of the greatest reproaches of the long parliament, was the death of archbishop Laud. In the first days of the session, while the fall of Strafford struck every one with astonishment, the commons had carried up an impeachment against him for high treason, in fourteen articles of charge; and he had lain ever since in the Tower, his revenues and even private estate sequestered, and in great indigence. After nearly three years' neglect, specific articles were exhibited against him in October, 1643, but not proceeded on with vigor till December, 1644; when, for whatever reason, a determination was taken to pursue this unfortunate prelate to death. The charges against him, which Wild, Maynard, and other managers of the impeachment were to aggravate into treason, related partly to those papistical innovations which had nothing of a political character about them, partly to the violent proceedings in the star-chamber and high-commission courts, wherein Laud was very prominent as a councilor, but certainly without any greater legal responsibility than fell on many others. He defended himself, not always prudently or satisfactorily, but with courage and ability; never receding from his magnificent notions of spiritual power, but endeavoring to shift the blame of the sentences pronounced by the council on those who concurred with him. The imputation of popery he repelled by a list of the converts he had made; but the word was equivocal, and he could not deny the difference between his protestantism and that of our Reformation. Nothing could be more monstrous than the allegation of treason in this case. The judges, on a reference by the lords, gave it to be understood, in their timid way, that the charges contained no legal treason. But, the commons hav-

ing changed their impeachment into an ordinance for his execution, the peers were pusillanimous enough to comply. Laud had amply merited punishment for his tyrannical abuse of power; but his execution at the age of seventy, without the slightest pretense of political necessity, was a far more unjustifiable instance of it than any that was alleged against him.

§ 12. Pursuant to the before-mentioned treaty, the Scots army of 21,000 men marched into England in January, 1644. This was a very serious accession to Charles's difficulties, already sufficient to dissipate all hopes of final triumph, except in the most sanguine minds. His successes, in fact, had been rather such as to surprise well-judging men than to make them expect any more favorable termination of the war than by a fair treaty. From the beginning it may be said that the yeomanry and trading classes of towns were generally hostile to the king's side, even in those counties which were in his military occupation; except in a few, such as Cornwall, Worcester, Salop, and most of Wales, where the prevailing sentiment was chiefly royalist; and this disaffection was prodigiously increased through the license of his ill-paid and ill-disciplined army. On the other hand, the gentry were in a great majority attached to his cause, even in the parts of England which lay subject to the parliament. But he was never able to make any durable impression on what were called the associated counties, extending from Norfolk to Sussex inclusively, within which no rising could be attempted with any effect; while, on the other hand, the parliament possessed several garrisons, and kept up considerable forces in that larger portion of the kingdom where he might be reckoned superior. Their resources were far greater; and the taxes imposed by them, though exceedingly heavy, were more regularly paid and less ruinous to the people than the sudden exactions, half plunder half contribution, of the ravenous cavaliers. The king lost ground during the winter. He had built hopes on bringing over troops from Ireland; for the sake of which he made a truce, then called the cessation, with the rebel catholics. But this re-enforcement having been beaten and dispersed by Fairfax at Namptwich, he had the mortification of finding that this scheme had much increased his own unpopularity, and the distrust entertained of him even by his adherents, without the smallest advantage. The next campaign was marked by the great defeat of Rupert and Newcastle at Marston Moor, and the loss of the north of England; a blow so terrible as must have

brought on his speedy ruin, if it had not been in some degree mitigated by his strange and unexpected success over Essex in the west, and by the tardiness of the Scots in making use of their victory. Upon the result of the campaign of 1644, the king's affairs were in such bad condition that nothing less than a series of victories could have reinstated them; yet not so totally ruined as to hold out much prospect of an approaching termination to the people's calamities.

§ 13. There had been, from the very commencement of the war, all that distraction in the king's councils at Oxford, and all those bickerings and heart-burnings among his adherents, which naturally belong to men embarked in a dangerous cause with different motives and different views. The military men, some of whom had served with the Swedes in Germany, acknowledged no laws but those of war; and could not understand that, either in annoying the enemy or providing for themselves, they were to acknowledge any restraints of the civil power. The lawyers, on the other hand, and the whole constitutional party, labored to keep up, in the midst of arms, the appearances at least of legal justice and that favorite maxim of Englishmen, the supremacy of civil over military authority, rather more strictly perhaps than the nature of their actual circumstances would admit. At the head of the former party stood the king's two nephews, Rupert and Maurice, the younger sons of the late unfortunate elector palatine, soldiers of fortune (as we may truly call them), of rude and imperious characters, avowedly despising the council and the common law, and supported by Charles, with all his injudiciousness and incapacity for affairs, against the greatest men of the kingdom. Another very powerful and obnoxious faction was that of the catholics, proud of their services and sacrifices, confident in the queen's protection, and looking at least to a full toleration as their just reward. They were the natural enemies of peace, and little less hated at Oxford than at Westminster.

§ 14. At the beginning of the winter of 1643 the king took the remarkable step of summoning the peers and commoners of his party to meet in parliament at Oxford. This was evidently suggested by the constitutionalists with the intention of obtaining a supply by more regular methods than forced contribution, and of opposing a barrier to the military and popish interests. Whether it were equally calculated to further the king's cause may admit of some doubt. The royalist convention, indeed, which name it ought rather to have taken than that of parliament, met in considerable strength

at Oxford. Forty-three peers, and one hundred and eighteen commoners, subscribed a letter to the earl of Essex, expressing their anxiety for a treaty of peace; twenty-nine of the former, and fifty-seven of the latter, it is said, being then absent on the king's service, or other occasions. Such a display of numbers, nearly double in one house and nearly half in the other, of those who remained at Westminster, might have an effect on the nation's prejudices, and at least redeem the king from the charge of standing singly against his parliament. But they came in no spirit of fervid loyalty, rather distrustful of the king, especially on the score of religion; averse to some whom he had injudiciously raised to power, such as Digby and Cottington; and so eager for pacification as not, perhaps, to have been unwilling to purchase it by greater concessions than he could prudently make. Peace, however, was by no means brought nearer by their meeting; the parliament, jealous and alarmed at it, would never recognize their existence, and were so provoked at their voting the lords and commons at Westminster guilty of treason, that, if we believe a writer of some authority, the two houses unanimously passed a vote on Essex's motion, summoning the king to appear by a certain day. But the Scots commissioners had force enough to turn aside such violent suggestions, and ultimately obtained the concurrence of both houses in propositions for a treaty. They had begun to find themselves less likely to sway the councils of Westminster than they had expected, and dreaded the rising ascendency of Cromwell.

The treaty was opened at Uxbridge in January, 1645. But neither the king nor his adversaries entered on it with minds sincerely bent on peace: they, on the one hand, resolute not to swerve from the utmost rigor of a conqueror's terms, without having conquered; and he, though more secretly, cherishing illusive hopes of a more triumphant restoration to power than any treaty could be expected to effect. The three leading topics of discussion among the negotiators at Uxbridge were the church, the militia, and the state of Ireland. Bound by their unhappy covenant, and watched by their Scots colleagues, the English commissioners on the parliament side demanded the complete establishment of a presbyterian polity, and the substitution of what was called the directory for the Anglican liturgy. Upon this head there was little prospect of a union. The king had deeply imbibed the tenets of Andrews and Laud, believing an episcopal government indispensably necessary to the valid ad-

ministration of the sacraments, and the very existence of a Christian church. The Scots, and a portion of the English clergy, were equally confident that their presbyterian form was established by the apostles as a divine model, from which it was unlawful to depart. The royalists offered, what in an earlier stage of their dissensions would have satisfied almost every man — that limited scheme of episcopal hierarchy, above mentioned as approved by Usher, rendering the bishop among his presbyters much like the king in parliament, not free to exercise his jurisdiction, nor to confer orders without their consent, and offered to leave all ceremonies to the minister's discretion. Such a compromise would probably have pleased the English nation, averse to nothing in their established church except its abuses; but the parliamentary negotiators would not so much as enter into discussion upon it.

They were hardly less unyielding on the subject of the militia. They began with a demand of naming all the commanders by sea and land, including the lord-lieutenant of Ireland, and all governors of garrisons, for an unlimited time. The king, though not very willingly, proposed that the command should be vested in twenty persons, half to be named by himself, half by the parliament, for the term of three years, which he afterward extended to seven, at the expiration of which time it should revert to the crown. But the utmost concession that could be obtained from the other side was to limit their exclusive possession of this power to seven years, leaving the matter open for an ulterior arrangement by act of parliament at their termination. Even if this treaty had been conducted between two belligerent states, whom rivalry or ambition often excite to press every demand which superior power can extort from weakness, there yet was nothing in the condition of the king's affairs which should compel him thus to pass under the yoke, and enter his capital as a prisoner.

§ 15. It remained only, after the rupture of the treaty at Uxbridge, to try once more the fortune of war. The people, both in the king's and parliament's quarters, but especially the former, heard with dismay that peace could not be attained. Many of the perpetual skirmishes and captures of towns, which made every man's life and fortune precarious, have found no place in general history, but may be traced in the journal of Whitelock, or in the Mercuries and other fugitive sheets, great numbers of which are still extant. And it will appear, I believe, from these, that scarcely one county in

England was exempt, at one time or other of the war, from becoming the scene of this unnatural contest. Compared, indeed, with the civil wars in France in the preceding century, there had been fewer acts of enormous cruelty, and less atrocious breaches of public faith. But much blood had been wantonly shed, and articles of capitulation had been very indifferently kept. The royalist army, especially the cavalry, commanded by men either wholly unprincipled, or at least regardless of the people, and deeming them ill affected, the princes Rupert and Maurice, Goring and Wilmot, lived without restraint, or law, or military discipline, and committed every excess even in friendly quarters. An ostentatious dissoluteness became characteristic of the cavalier, as a formal austerity was of the puritan: one spoiling his neighbor in the name of God, the other of the king. The parliament's troops were not quite free from these military vices, but displayed them in a much less scandalous degree, owing to their more religious habits and the influence of their presbyterian chaplains, to the better example of their commanders, and to the comparative, though not absolute, punctuality of their pay. But this pay was raised through unheard-of assessments, especially an excise on liquors, a new name in England, and through the sequestration of the estates of all the king's adherents: resources of which he also had availed himself, partly by the rights of war, partly by the grant of his Oxford parliament.

§ 16. A war so calamitous seemed likely to endure till it had exhausted the nation. With all the parliament's superiority, they had yet to subdue nearly half the kingdom. The Scots had not advanced southward, content with reducing Newcastle and the rest of the northern counties. These they treated almost as hostile, without distinction of parties, not only exacting contributions, but committing, unless they are much belied, great excesses of indiscipline; their presbyterian gravity not having yet overcome the ancient national propensities. In the midland and western parts the king had just the worse, without having sustained material loss; and another summer might pass away in marches and countermarches, in skirmishes of cavalry, in tedious sieges of paltry fortifications, some of them mere country houses, which nothing but an amazing deficiency in that branch of military science could have rendered tenable. This protraction of the war had long given rise to no unnatural discontent with its management, and to suspicions, first of Essex, then of Manchester and others in command, as if they were secretly

reluctant to complete the triumph of their employers. It is, indeed, not impossible that both these peers, especially the former, out of their desire to see peace restored on terms compatible with some degree of authority in the crown, and with the dignity of their own order, did not always press their advantages against the king as if he had been a public enemy.

§ 17. There could, however, be no doubt that Fairfax and Cromwell were far superior, both by their own talents for war and the discipline they had introduced into their army, to the earlier parliamentary commanders; and that, as a military arrangement, the self-denying ordinance was judiciously conceived. This, which took from all members of both houses their commands in the army, or civil employments, was, as is well known, the first great victory of the independent party which had grown up lately in parliament under Vane and Cromwell. They carried another measure of no less importance, collateral to the former—the new-modeling, as it was called, of the army; reducing it to twenty-one or twenty-two thousand men; discharging such officers and soldiers as were reckoned unfit, and completing their regiments by more select levies. The ordinance, after being once rejected by the lords, passed their house with some modifications in April. From Fairfax, the new general, they saw little to fear and much to expect; while Cromwell, as a member of the house of commons, was positively excluded by the ordinance itself. But, through a successful intrigue of his friends, this great man, already not less formidable to the presbyterian faction than to the royalists, was permitted to continue lieutenant-general.

§ 18. The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over the king and the monarchy, but over the parliament and the nation.

It does not appear to me that a brave and prudent man, in the condition of Charles I., had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeful tide of fortune. I can not, therefore, blame him either for refusing unreasonable terms of accommodation or for not relinquishing altogether the contest. But after his defeat at Naseby his affairs were, in a military sense, so irretrievable that, in prolonging the war with as much obstinacy as the

broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents which has been sometimes imputed to him. There was, from the hour of that battle, only one safe and honorable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction—hopes of regaining power through the disunion of his enemies—might have been entertained with better reason, as with greater safety, in a foreign land.

Whether any such thoughts of abandoning a hopeless contest were ever entertained by the king during this particular period, it is impossible to pronounce; we should infer the contrary from all his actions. But, whatever might have been the king's disposition, he would not have dared to retire from England. That sinister domestic rule to which he had so long been subject controlled every action. Careless of her husband's happiness, and already attached probably to one whom she afterward married, Henrietta longed only for his recovery of a power which would become her own. Hence, while she constantly laid her injunctions on Charles never to concede any thing as to the militia or the Irish catholics, she became desirous, when no other means presented itself, that he should sacrifice what was still nearer to his heart, the episcopal church government. The queen-regent of France, whose sincerity in desiring the king's restoration there can be no ground to deny, was equally persuaded that he could hope for it on no less painful conditions. They reasoned of course very plausibly from the great precedent of flexible consciences, the reconciliation of Henrietta's illustrious father to the catholic church. As he could neither have regained his royal power nor restored peace to France without this compliance with his subjects' prejudices, so Charles could still less expect, in circumstances by no means so favorable, that he should avoid a concession, in the eyes of almost all men but himself, of incomparably less importance. It was in expectation, or perhaps rather in the hope, of this sacrifice that the French envoy Montreuil entered on his ill-starred negotiation for the king's taking shelter with the Scots army.

And it must be confessed that several of his best friends were hardly less anxious that he should desert a church he could not protect. They doubted not, reasoning from their own characters, that he would ultimately give way. But that Charles, unchangeably resolved on this head, should have put himself in the power of men fully as bigoted as himself (if he really conceived that the Scots presbyterians would shed their blood to re-establish the prelacy they abhorred), was an additional proof of that delusion which made him fancy that no government could be established without his concurrence; unless indeed we should rather consider it as one of those desperate courses into which he who can foresee nothing but evil from every calculable line of action will sometimes plunge at a venture, borrowing some ray of hope from the uncertainty of their consequences.

§ 19. It was an inevitable effect of this step that the king surrendered his personal liberty, which he never afterward recovered. Considering his situation, we may at first think the parliament tolerably moderate in offering nearly the same terms of peace at Newcastle which he had rejected at Uxbridge; the chief difference being that the power of the militia, which had been demanded for commissioners nominated and removable by the two houses during an indefinite period, was now proposed to reside in the two houses for the space of twenty years; which rather more equivocally indicated their design of making the parliament perpetual. But in fact they had so abridged the royal prerogative by their former propositions, that, preserving the decent semblance of monarchy, scarce any thing further could be exacted. The king's circumstances, were, however, so altered that by persisting in his refusal of those propositions he excited a natural indignation at his obstinacy in men who felt their own right (the conqueror's right) to dictate terms at pleasure. Charles had to contend, during his unhappy residence at Newcastle, not merely with revolted subjects in the pride of conquest, and with bigoted priests, as blindly confident in one set of doubtful propositions as he was in the opposite, but with those he had trusted the most and loved the dearest. We have in the Clarendon "State Papers" a series of letters from Paris, written, some by the queen, others jointly by Colepepper, Jermyn, and Ashburnham, or the two former, urging him to sacrifice episcopacy, as the necessary means of his restoration. We have the king's answers, that display in an interesting manner the struggles of his mind under this severe trial. No candid reader, I think, can doubt that a

serious sense of obligation was predominant in Charles's persevering fidelity to the English church. He could hardly avoid perceiving that, as Colepepper told him in his rough style, the question was whether he would choose to be a king of presbytery or no king. But the utmost length which he could prevail on himself to go was to offer the continuance of the presbyterian discipline, as established by the parliament, for three years, during which a conference of divines might be had, in order to bring about a settlement.

Pressed thus on a topic so important above all others in his eyes, the king gave a proof of his sincerity by greater concessions of power than he had ever intended. He had some time before openly offered to let the parliament name all the commissioners of the militia for seven years, and all the officers of state and judges to hold their places for life. He now empowered a secret agent in London, Mr. William Murray, privately to sound the parliamentary leaders, if they would consent to the establishment of a moderated episcopacy after three or five years, on condition of his departing from the right of the militia during his whole life. This dereliction of the main ground of contest brought down the queen's indignation on his head. She wrote several letters, in an imperious and unfeeling tone, declaring that she would never set her foot in England as long as the parliament should exist. Jermyn and Colepepper assumed a style hardly less dictatorial in their letters, till Charles withdrew the proposal which Murray seems never to have communicated. It was indeed the evident effect of despair and a natural weariness of his thorny crown. He now began to express serious thoughts of making his escape, and seems even to hint more than once at a resignation of his government to the prince of Wales. But Henrietta forbade him to think of an escape, and alludes to the other with contempt and indignation. With this selfish and tyrannical woman, that life of exile and privacy which religion and letters would have rendered tolerable to the king, must have been spent in hardly less bitterness than on a dishonored throne. She had displayed in France as little virtue as at home: the small resources, which should have been frugally dispensed to those who had lost all for the royal cause, were squandered upon her favorite and her French servants. So totally had she abandoned all regard to English interests, that Hyde and Capel, when retired to Jersey, the governor of which, sir Edward Carteret, still held out for the king, discovered a plan formed by the queen and Jermyn, to put that island into the hands of France.

§ 20. It must, however, be admitted at the present day, that there was no better expedient for saving the king's life, and some portion of the royal authority for his descendants (a frank renunciation of episcopacy perhaps only excepted), than such an abdication, the time for which had come before he put himself into the hands of the Scots. His own party had been weakened, and the number of his well-wishers diminished, by something more than the events of war. The last unfortunate year had, in two memorable instances, revealed fresh proofs of that culpable imprudence, speaking mildly, which made wise and honest men hopeless of any permanent accommodation. At the battle of Naseby, copies of some letters to the queen, chiefly written about the time of the treaty of Uxbridge, and strangely preserved, fell into the hands of the enemy, and were instantly published. No other losses of that fatal day were more injurious to his cause. Besides many proofs of a contemptible subserviency to one justly deemed irreconcilable to the civil and religious interests of the kingdom, and many expressions indicating schemes and hopes inconsistent with any practicable peace, and especially a design to put an end to the parliament, he gave her power to treat with the English catholics, promising to take away all penal laws against them as soon as God should enable him to do so, in consideration of such powerful assistance as might deserve so great a favor, and enable him to effect it. Yet it was certain that no parliament, except in absolute duress, would consent to repeal these laws. To what sort of victory, therefore, did he look? It was remembered that, on taking the sacrament at Oxford some time before, he had solemnly protested that he would maintain the protestant religion of the church of England, without any connivance at popery. What trust could be reposed in a prince capable of forfeiting so solemn a pledge? Were it even supposed that he intended to break his word with the catholics, after obtaining such aid as they could render him, would his insincerity be less flagrant?

§ 21. These suspicions were much aggravated by a second discovery that took place soon afterward, of a secret treaty between the earl of Glamorgan and the confederate Irish catholics, not merely promising the repeal of the penal laws, but the establishment of their religion in far the greater part of Ireland. The marquis of Ormond, as well as lord Digby, who happened to be at Dublin, loudly exclaimed against Glamorgan's presumption in concluding such a treaty, and committed him to prison on a charge of treason. He

produced two commissions from the king, secretly granted without any seal or the knowledge of any minister, containing the fullest powers to treat with the Irish, and promising to fulfill any conditions into which he should enter. The king, informed of this, disavowed Glamorgan: and asserted in a letter to the parliament that he had merely a commission to raise men for his service, but no power to treat of any thing else, without the privity of the lord-lieutenant, much less to capitulate any thing concerning religion or any property belonging either to church or laity. Glamorgan, however, was soon released, and lost no portion of the king's or his family's favor.

This transaction has been the subject of much historical controversy. The enemies of Charles, both in his own and later ages, have considered it as a proof of his indifference, at least to the protestant religion, and of his readiness to accept the assistance of Irish rebels on any conditions. His advocates for a long time denied the authenticity of Glamorgan's commissions. But Dr. Birch demonstrated that they were genuine; and, if his dissertation could have left any doubt, later evidence might be adduced in confirmation. Hume, in a very artful and very unfair statement, admitting the authenticity of these instruments, endeavors to show that they were never intended to give Glamorgan any power to treat without Ormond's approbation. But they are worded in the most unconditional manner, without any reference to Ormond. No common reader can think them consistent with the king's story. I do not, however, impute to him any intention of ratifying the terms of Glamorgan's treaty. His want of faith was not to the protestant, but to the catholic. Upon weighing the whole of the evidence, it appears to me that he purposely gave Glamorgan, a sanguine and injudicious man, whom he could easily disown, so ample a commission as might remove the distrust that the Irish were likely to entertain of a negotiation wherein Ormond should be concerned; while, by a certain latitude in the style of the instrument, and by his own letters to the lord-lieutenant about Glamorgan's errand, he left it open to assert, in case of necessity, that it was never intended to exclude the former's privity and sanction. Charles had unhappily long been in the habit of perverting his natural acuteness to the mean subterfuges of equivocal language.

§ 22. By these discoveries of the king's insincerity, and by what seemed his infatuated obstinacy in refusing terms of accommodation, both nations became more and more alienated

from him; the one hardly restrained from casting him off, the other ready to leave him to his fate. This ill opinion of the king forms one apology for that action which has exposed the Scots nation to so much reproach—their delivery of his person to the English parliament. Perhaps, if we place ourselves in their situation, it will not appear deserving of quite such indignant censure. It would have shown more generosity to have offered the king an alternative of retiring to Holland; and, from what we now know, he probably would not have neglected the opportunity. To carry him back with their army into Scotland, would have exposed their nation to the most serious dangers. To undertake his defense by arms against England, as the ardent royalists desired, and doubtless the determined republicans no less, would have been, as was proved afterward, a mad and culpable renewal of the miseries of both kingdoms. He had voluntarily come to their camp; no faith was pledged to him; their very right to retain his person, though they had argued for it with the English parliament, seemed open to much doubt. The circumstance, unquestionably, which has always given a character of apparent baseness to this transaction, is the payment of £400,000 made to them so nearly at the same time that it has passed for the price of the king's person. This sum was part of a larger demand on the score of arrears of pay, and had been agreed upon long before we have any proof or reasonable suspicion of a stipulation to deliver up the king. That the parliament would never have actually paid it in case of a refusal to comply with this requisition, there can be, I presume, no kind of doubt; and of this, the Scots must have been fully aware. But whether there were any such secret bargain as had been supposed, or whether they would have delivered him up if there had been no pecuniary expectation in the case, is what I can not perceive sufficient grounds to pronounce with confidence, though I am much inclined to believe the affirmative of the latter question. And it is deserving of particular observation that the party in the house of commons which sought most earnestly to obtain possession of the king's person, and carried all the votes for payment of money to the Scots, was that which had no further aim than an accommodation with him, and a settlement of the government on the basis of its fundamental laws, though doubtless on terms very derogatory to his prerogative; while those who opposed each part of the negotiation were the zealous enemies of the king, and, in some instances at least, of the monarchy. The journals bear witness to this.

§ 23. Whatever might have been the consequence of the king's accepting the propositions of Newcastle, his chance of restoration upon any terms was now in all appearance very slender. He had to encounter enemies more dangerous and implacable than the presbyterians. That faction, which from small and insensible beginnings had acquired continued strength, through ambition in a few, through fanaticism in many, through a despair in some of reconciling the pretensions of royalty with those of the people, was now rapidly ascending to superiority. Though still weak in the house of commons, it had spread prodigiously in the army, especially since its new-modeling at the time of the self-denying ordinance. The presbyterians saw with dismay the growth of their own and the constitution's enemies. But the royalists, who had less to fear from confusion than from any settlement that the commons would be brought to make, rejoiced in the increasing disunion, and fondly believed, like their master, that one or other party must seek assistance at their hands.

The independent party comprehended, besides the members of that religious denomination, a countless brood of fanatical sectaries, nursed in the lap of presbyterianism, and fed with the stimulating aliment she furnished, till their intoxicated fancies could neither be restrained within the limits of her creed nor those of her discipline. The presbyterian zealots were systematically intolerant. A common cause made toleration the doctrine of the sectaries. About the beginning of the war it had been deemed expedient to call together an assembly of divines, nominated by the parliament, and consisting not only of clergymen, but, according to the presbyterian usage, of lay members, peers as well as commoners, by whose advice a general reformation of the church was to be planned. These were chiefly presbyterian, though a small minority of independents, and a few moderate episcopalians, headed by Selden, gave them much trouble. The general imposition of the covenant, and the substitution of the directory for the common prayer (which was forbidden to be used even in any private family, by an ordinance of August, 1654), seemed to assure the triumph of presbyterianism, which became complete, in point of law, by an ordinance of February, 1646, establishing for three years the Scots model of classes, synods, and general assemblies throughout England. But in this very ordinance there was a reservation which wounded the spiritual arrogance of that party. Their favorite tenet had always been the independ-

ency of the church. They had rejected, with as much abhorrence as the catholics themselves, the royal supremacy, so far as it controlled the exercise of spiritual discipline. But the house of commons were inclined to part with no portion of that prerogative which they had wrested from the crown. Besides the independents, who were still weak, a party called Erastians,[1] and chiefly composed of the common lawyers, under the guidance of Selden, the sworn foe of every ecclesiastical usurpation, withstood the assembly's pretensions with success. They negatived a declaration of the divine right of presbyterian government. They voted a petition from the assembly, complaining of a recent ordinance as an encroachment on spiritual jurisdiction, to be a breach of privilege. The presbyterian tribunals were made subject to the appellant control of parliament, as those of the Anglican church had been to that of the crown. The cases wherein spiritual censures could be pronounced, or the sacrament denied, instead of being left to the clergy, were defined by law. Whether from dissatisfaction on this account, or some other reason, the presbyterian discipline was never carried into effect except to a certain extent in London and in Lancashire. But the beneficed clergy throughout England, till the return of Charles II., were chiefly, though not entirely, of that denomination.

This party was still so far predominant, having the strong support of the city of London and its corporation, with almost all the peers who remained in their house, that the independents and other sectaries neither opposed this ordinance for its temporary establishment, nor sought any thing further than a toleration for their own worship. The question, as Neal well observes, was not between presbytery and independency, but between presbytery with a toleration and without one. Not merely from their own exclusive bigotry, but from a political alarm by no means ungrounded, the presbyterians stood firmly against all liberty of conscience. But in this again they could not influence the house of commons to suppress the sectaries, though no open declaration in favor of indulgence was as yet made. It is still the boast of the independents that they first brought forward the great principles of religious toleration (I mean as distin-

[1] The Erastians were named from Erastus, a German physician in the sixteenth century. The denomination is often used in the present age ignorantly, and therefore indefinitely; but I apprehend that the fundamental principle of his followers was this:—That, in a commonwealth where the magistrate professes Christianity, it is not convenient that offenses against religion and morality should be punished by the censures of the church, especially by excommunication.

guished from maxims of political expediency) which had been confined to a few philosophical minds—to Sir Thomas More, in those days of his better judgment when he planned his republic of Utopia, to Thuanus, or L'Hospital. Such principles are, indeed, naturally congenial to the persecuted; and it is by the alternate oppression of so many different sects that they have now obtained their universal reception. But the independents also assert that they first maintained them while in power—a far higher praise, which, however, can only be allowed them by comparison. Without invidiously glancing at their early conduct in New England, it must be admitted that the continuance of the penal laws against catholics, the prohibition of the episcopalian worship, and the punishment of one or two anti-trinitarians under Cromwell, are proofs that the tolerant principle had not yet acquired perfect vigor. If the independent sectaries were its earliest advocates, it was the Anglican writers, the school of Chillingworth, Hales, Taylor, Locke, and Hoadley, that rendered it victorious.[2]

The king, as I have said, and his party cherished too sanguine hopes from the disunion of their opponents. Though warned of it by the parliamentary commissioners at Uxbridge, though, in fact, it was quite notorious and undisguised, they seem never to have comprehended that many active spirits looked to the entire subversion of the monarchy. The king in particular was haunted by a prejudice, natural to his obstinate and undiscerning mind, that he was necessary to the settlement of the nation; so that, if he remained firm, the whole parliament and army must be at his feet. Yet during the negotiations at Newcastle there was daily an imminent danger that the majority of parliament, irritated by his delays, would come to some vote excluding him from the throne. The Scots presbyterians, whatever we may think of their behavior, were sincerely attached, if not by loyal affection, yet by national pride, to the blood of their ancient kings. They thought and spoke of Charles as of a headstrong child, to be restrained and chastised, but never cast off. But in England he had absolutely no friends among the prevailing party; many there were who thought monarchy best for the nation, but none who cared for the king.

[2] Though the writings of Chillingworth and Hales are not directly in behalf of toleration, no one could relish them without imbibing its spirit in the fullest measure. The great work of Jeremy Taylor, on the Liberty of Prophesying, was published in 1647; and, if we except a few concessions to the temper of the times, which are not reconcilable to its general principles, has left little for those who followed him.

§ 24. This schism, nevertheless, between the parliament and the army was at least in appearance very desirable for Charles, and seemed to afford him an opportunity which a discreet prince might improve to great advantage, though it unfortunately deluded him with chimerical expectations. At the conclusion of the war, which the useless obstinacy of the royalists had protracted till the beginning of 1647, the commons began to take measures for breaking the force of their remaining enemy. They resolved to disband a part of the army, and to send the rest into Ireland. They formed schemes for getting rid of Cromwell, and even made some demur about continuing Fairfax in command. But in all measures that exact promptitude and energy, treachery and timidity are apt to enfeeble the resolutions of a popular assembly. Their demonstrations of enmity were, however, so alarming to the army, who knew themselves disliked by the people, and dependent for their pay on the parliament, that as early as April, 1647, an overture was secretly made to the king, that they would replace him in his power and dignity. He cautiously answered that he would not involve the kingdom in a fresh war, but should ever feel the strongest sense of this offer from the army. Whether they were discontented at the coldness of this reply, or, as is more probable, the offer had only proceeded from a minority of the officers, no further overture was made, till not long afterward the bold manœuvre of Joyce had placed the king's person in their power.

§ 25. The first effect of this military violence was to display the parliament's deficiency in political courage. They immediately expunged, by a majority of 96 to 79, a vote of reprehension passed some weeks before, upon a remonstrance from the army which the presbyterians had highly resented, and gave other proofs of retracing their steps. But the army was not inclined to accept their submission in full discharge of the provocation. It had schemes of its own for the reformation and settlement of the kingdom, more extensive than those of the presbyterian faction. It had its own wrongs also to revenge. Advancing toward London, the general and council of war sent up charges of treason against eleven principal members of that party, who obtained leave to retire beyond sea. Here may be said to have fallen the legislative power and civil government of England; which from this hour till that of the Restoration had never more than a momentary and precarious gleam of existence, perpetually interrupted by the sword.

Those who have once bowed their knee to force, must expect that force will be forever their master. In a few weeks after this submission of the commons to the army, they were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian politics of the city, who compelled them by actual violence to rescind several of their late votes. Trampled upon by either side, the two speakers, several peers, and a great number of the lower house, deemed it somewhat less ignominious, and certainly more politic, to throw themselves on the protection of the army. They were accordingly soon restored to their places, at the price of a more complete and irretrievable subjection to the military power than they had already undergone. Though the presbyterians maintained a pertinacious resistance within the walls of the house, it was evident that the real power of command was gone from them, and that Cromwell with the army must either become arbiters between the king and parliament, or crush the remaining authority of both.

§ 26. There are few circumstances in our history which have caused more perplexity to inquirers than the conduct of Cromwell and his friends toward the king in the year 1647. Those who look only at the ambitious and dissembling character of that leader, or at the fierce republicanism imputed to Ireton, will hardly believe that either of them could harbor any thing like sincere designs of restoring him even to that remnant of sovereignty which the parliament would have spared. Yet, when we consider attentively the public documents and private memoirs of that period, it does appear probable that their first intentions toward the king were not unfavorable, and so far sincere that it was their project to make use of his name rather than totally to set him aside. But whether by gratifying Cromwell and his associates with honors, and throwing the whole administration into their hands, Charles would have long contrived to keep a tarnished crown on his head, must be very problematical.

§ 27. The new jailers of this unfortunate prince began by treating him with unusual indulgence, especially in permitting his episcopal chaplains to attend him. This was deemed a pledge of what he thought an invaluable advantage in dealing with the army, that they would not insist upon the covenant, which in fact was nearly as odious to them as to the royalists, though for very different reasons. Charles, naturally sanguine, and utterly incapable in every part of his life of taking a just view of affairs, was extravagantly

elated by these equivocal testimonials of good-will. He blindly listened to private insinuations from rash or treacherous friends, that the soldiers were with him, just after his seizure by Joyce. "I would have you to know, sir," he said to Fairfax, "that I have as good an interest in the army as yourself;" an opinion as injudiciously uttered as it was absurdly conceived. These strange expectations account for the ill reception which in the hasty irritation of disappointment he gave to the proposals of the army, when they were actually tendered to him at Hampton Court, and which seems to have eventually cost him his life. These proposals appear to have been drawn up by Ireton, a lawyer by education, and a man of much courage and capacity. He had been supposed, like a large proportion of the officers, to aim at a settlement of the nation under a democratical polity. But the army, even if their wishes in general went so far, which is hardly evident, were not yet so decidedly masters as to dictate a form of government uncongenial to the ancient laws and fixed prejudices of the people. Something of this tendency is discoverable in the propositions made to the king, which had never appeared in those of the parliament. It was proposed that parliaments should be biennial; that they should never sit less than a hundred and twenty days, nor more than two hundred and forty; that the representation of the commons should be reformed, by abolishing small boroughs and increasing the number of members for counties, so as to render the house of commons, as near as might be, an equal representation of the whole. In respect of the militia and some other points, they either followed the parliamentary propositions of Newcastle, or modified them favorably for the king. They excepted a very small number of the king's adherents from the privilege of paying a composition for their estates, and set that of the rest considerably lower than had been fixed by the parliament. They stipulated that the royalists should not sit in the next parliament. As to religion, they provided for liberty of conscience, declared against the imposition of the covenant, and, by insisting on the retrenchment of the coercive jurisdiction of bishops and the abrogation of penalties for not reading the common prayer, left it to be implied that both might continue established. The whole tenor of these propositions was in a style far more respectful to the king, and lenient toward his adherents, than had ever been adopted since the beginning of the war. The sincerity indeed of these overtures might be very questionable if Cromwell had been con-

cerned in them; but they proceeded from those elective tribunes called Agitators, who had been established in every regiment to superintend the interests of the army. And the terms were surely as good as Charles had any reason to hope. The severities against his party were mitigated. The grand obstacles to all accommodation, the covenant and presbyterian establishment, were at once removed. For the changes projected in the constitution of parliament, they were not necessarily injurious to the monarchy. That parliament should not be dissolved until it had sat a certain time was so salutary a provision, that the triennial act was hardly complete without it.

It is however probable, from the king's extreme tenaciousness of his prerogative, that these were the conditions that he found it most difficult to endure. Having obtained, through sir John Berkley, a sight of the propositions before they were openly made, he expressed much displeasure; and said that, if the army were inclined to close with him, they would never have demanded such hard terms. He seems to have principally objected, at least in words, to the exception of seven unnamed persons from pardon, to the exclusion of his party from the next parliament, and to the want of any articles in favor of the church. Berkley endeavored to show him that it was not likely that the army, if meaning sincerely, would ask less than this. But the king, still tampering with the Scots, and keeping his eyes fixed on the city and parliament, at that moment came to an open breach with the army, disdainfully refused the propositions when publicly tendered to him, with such expressions of misplaced resentment and preposterous confidence as convinced the officers that they could neither conciliate nor trust him. This unexpected haughtiness lost him all chance with those proud and republican spirits; and as they succeeded about the same time in bridling the presbyterian party in parliament, there seemed no necessity for an agreement with the king, and their former determinations of altering the frame of government returned with more revengeful fury against his person.

§ 28. Charles's continuance at Hampton Court, there can be little doubt, would have exposed him to such imminent risk that, in escaping from thence, he acted on a reasonable principle of self-preservation. He might probably, with due precautions, have reached France or Jersey. But the hastiness of his retreat from Hampton Court giving no time, he fell again into the toils through the helplessness of his situation and the unfortunate counsels of one whom he trusted.

The fortitude of his own mind sustained him in this state of captivity and entire seclusion from his friends. No one, however sensible to the infirmities of Charles's disposition and the defects of his understanding, can refuse admiration to that patient firmness and unaided acuteness which he displayed throughout the last and most melancholy year of his life. He had now abandoned all expectation of obtaining any present terms for the church or crown. He proposed, therefore—what he had privately empowered Murray to offer the year before—to confirm the presbyterian government for three years, and to give up the militia during his whole life, with other concessions of importance. To preserve the church lands from sale, to shield his friends from proscription, to obtain a legal security for the restoration of the monarchy in his son, were from henceforth the main objects of all his efforts. It was, however, far too late, even for these moderate conditions of peace. Upon his declining to pass four bills tendered to him as preliminaries of a treaty, which, on that very account, besides his objections to part of their contents, he justly considered as unfair, the parliament voted that no more addresses should be made to him, and that they would receive no more messages. He was placed in close and solitary confinement; and at a meeting of the principal officers at Windsor it was concluded to bring him to trial, and avenge the blood shed in the war by an awful example of punishment; Cromwell and Ireton, if either of them had been ever favorable to the king, acceded at this time to the severity of the rest.

§ 29. Yet, in the midst of this peril and seeming abandonment, his affairs were really less desperate than they had been; and a few rays of light broke for a time through the clouds that enveloped him. From the hour that the Scots delivered him up at Newcastle they seem to have felt the discredit of such an action, and longed for the opportunity of redeeming their public name. They perceived more and more that a well-disciplined army, under a subtle chief inveterately hostile to them, were rapidly becoming masters of England. Instead of that covenanted alliance, that unity in church and state they had expected, they were to look for all the jealousy and dissension that a complete discordance in civil and spiritual polity could inspire. Their commissioners, therefore, in England, the earl of Lanark, always a moderate royalist, and the earl of Lauderdale, a warm presbyterian, had kept up a secret intercourse with the king at Hampton Court. After his detention at Carisbrook, they

openly declared themselves against the four bills proposed by the English parliament, and at length concluded a private treaty with him, by which, on certain terms quite as favorable as he could justly expect, they bound themselves to enter England with an army in order to restore him to his freedom and dignity. This invasion was to be combined with risings in various parts of the country: the presbyterian and royalist, though still retaining much of animosity toward each other, concurring at least in abhorrence of military usurpation; and the common people having very generally returned to that affectionate respect for the king's person, which sympathy for his sufferings, and a sense how little they had been gainers by the change of government, must naturally have excited. The unfortunate issue of the Scots expedition under the duke of Hamilton, and of the various insurrections throughout England, quelled by the vigilance and good conduct of Fairfax and Cromwell, is well known. But these formidable manifestations of the public sentiment in favor of peace with the king on honorable conditions, wherein the city of London, ruled by the presbyterian ministers, took a share, compelled the house of commons to retract its measures. They came to a vote, by 165 to 99, that they would not alter the fundamental government by king, lords, and commons; they abandoned their impeachment against seven peers, the most moderate of the upper house, and the most obnoxious to the army; they restored the eleven members to their seats; they revoked their resolution against a personal treaty with the king, and even that which required his assent by certain preliminary articles. In a word, the party for distinction's sake called presbyterian, but now rather to be denominated constitutional, regained its ascendency. This change in the councils of parliament brought on the treaty of Newport.

§ 30. The treaty of Newport was set on foot and managed by those politicians of the house of lords who, having long suspected no danger to themselves but from the power of the king, had discovered, somewhat of the latest, that the crown itself was at stake, and that their own privileges were set on the same cast. Nothing was more remote from the intentions of the earl of Northumberland or lord Say than to see themselves pushed from their seats by such upstarts as Ireton and Harrison; and their present mortification afforded a proof how men reckoned wise in their generation become the dupes of their own selfish, crafty, and pusillanimous policy. They now grew anxious to see a treaty con-

cluded with the king. Sensible that it was necessary to anticipate, if possible, the return of Cromwell from the north, they implored him to comply at once with all the propositions of parliament, or at least to yield in the first instance as far as he meant to go. They had not, however, mitigated in any degree the rigorous conditions so often proposed; nor did the king during this treaty obtain any reciprocal concession worth mentioning in return for his surrender of almost all that could be demanded. His real error was to have entered upon any treaty, and still more to have drawn it out by tardy and ineffectual capitulations. There had long been only one course either for safety or for honor—the abdication of his royal office; now probably too late to preserve his life, but still more honorable than the treaty of Newport.

§ 31. There can be no more erroneous opinion than that of such as believe that the desire of overturning the monarchy produced the civil war, rather than that the civil war brought on the former. In a peaceful and ancient kingdom like England the thought of change could not spontaneously arise. A very few speculative men, by the study of antiquity, or by observation of the prosperity of Venice and Holland, might be led to an abstract preference of republican politics; some fanatics might aspire to a Jewish theocracy; but at the meeting of the long parliament we have not the slightest cause to suppose that any party, or any number of persons among its members, had formed what must then have appeared so extravagant a conception. The insuperable distrust of the king's designs, the irritation excited by the sufferings of the war, the impracticability, which every attempt at negotiation displayed, of obtaining his acquiescence to terms deemed indispensable, gradually created a powerful faction, whose chief bond of union was a determination to set him aside. What further scheme they had planned is uncertain: none probably in which any number were agreed: some looked to the prince of Wales, others, perhaps, at one time to the elector palatine; but necessity itself must have suggested to many the idea of a republican settlement. In the new-modeled army of 1645, composed of independents and enthusiasts of every denomination, a fervid eagerness for changes in the civil polity, as well as in religion, was soon found to predominate. Not checked, like the two houses, by attachment to forms, and by the influence of lawyers, they launched forth into varied projects of reform, sometimes judicious, or at least plausible, sometimes wildly fanatical. They reckoned the king a tyrant, whom, as they

might fight against, they might also put to death, and whom it were folly to provoke if he were again to become their master. Elated with their victories, they began already in imagination to carve out the kingdom for themselves; and remembered that saying so congenial to a revolutionary army, "that the first of monarchs was a successful leader, the first of nobles were his followers."

The knowledge of this innovating spirit in the army gave confidence to the violent party in parliament, and increased its numbers by the accession of some of those to whom nature has given a fine sense for discerning their own advantage. It was doubtless swollen through the publication of the king's letters, and his pertinacity in clinging to his prerogative. And the complexion of the house of commons was materially altered by the introduction at once of a large body of fresh members. They had at the beginning abstained from issuing writs to replace those whose death or expulsion had left their seats vacant. These vacancies, by the disabling votes against all the king's party, became so numerous that it seemed a glaring violation of the popular principles to which they appealed to carry on the public business with so maimed a representation of the people. It was, however, plainly impossible to have elections in many parts of the kingdom while the royal army was in strength; and the change, by filling up nearly two hundred vacancies at once, was likely to become so important, that some feared that the cavaliers, others that the independents and republicans, might find their advantage in it. The latter party were generally earnest for new elections; and carried their point against the presbyterians in September, 1645, when new writs were ordered for all the places which were left deficient of one or both representatives. The result of these elections, though a few persons rather friendly to the king came into the house, was on the whole very favorable to the army. The self-denying ordinance no longer being in operation, the principal officers were elected on every side; and, with not many exceptions, recruited the ranks of that small body which had already been marked by implacable dislike of the king, and by zeal for a total new-modeling of the government. In the summer of 1646 this party had so far obtained the upper hand, that, according to one of our best authorities, the Scots commissioners had all imaginable difficulty to prevent his deposition. In the course of the year 1647 more overt proofs of a design to change the established constitution were given by a party out-of-doors. But the first

decisive proof, perhaps, which the journals of parliament afford of the existence of a republican party, was the vote of 22d September, 1647, that they would once again make application to the king for those things which they judged necessary for the welfare and safety of the kingdom. This was carried by 70 to 23. Their subsequent resolution of January 4, 1648, against any further addresses to the king, which passed by a majority of 141 to 91, was a virtual renunciation of allegiance. The lords, after a warm debate, concurred in this vote. And the army had in November, 1647, before the king's escape from Hampton Court, published a declaration of their design for the settlement of the nation under a sovereign representative assembly, which should possess authority to make or repeal laws, and to call magistrates to account.

We are not certainly to conclude that all who, in 1648, had made up their minds against the king's restoration, were equally averse to all regal government. The prince of Wales had taken so active, and, for a moment, so successful a share in the war of that year, that his father's enemies were become his own. Meetings however were held, where the military and parliamentary chiefs discussed the schemes of raising the duke of York, or his younger brother the duke of Gloucester, to the throne. Cromwell especially wavered, or pretended to waver, as to the settlement of the nation; nor is there any evidence, so far as I know, that he had ever professed himself averse to monarchy, till, dexterously mounting on the wave which he could not stem, he led on those zealots who had resolved to celebrate the inauguration of their new commonwealth with the blood of a victim king.

§ 32. It was about the end of 1647, as I have said, that the principal officers took the determination, which had been already menaced by some of the agitators, of bringing the king, as the first and greatest delinquent, to public justice. Too stern and haughty, too confident of the righteousness of their actions, to think of private assassination, they sought to gratify their pride by the solemnity and notoriousness, by the very infamy and eventual danger, of an act unprecedented in the history of nations. Throughout the year 1648 this design, though suspended, became familiar to the people's expectation. The commonwealth's men and levelers, the various sectaries (admitting a few exceptions), grew clamorous for the king's death. Petitions were presented to the commons, praying for justice on all delinquents, from the highest to the lowest. And not long afterward the general officers

of the army came forward with a long remonstrance against any treaty, and insisting that the capital and grand author of their troubles be speedily brought to justice, for the treason, blood, and mischief whereof he had been guilty. This was soon followed by the vote of the presbyterian party, that the answers of the king to the propositions of both houses are a ground for the house to proceed upon for the settlement of the peace of the kingdom, by the violent expulsion, or, as it was called, seclusion, of all the presbyterian members from the house, and the ordinance of a minority, constituting the high court of justice for the trial of the king.

§ 33. A very small number among those who sat in this strange tribunal upon Charles I. were undoubtedly capable of taking statesman-like views of the interests of their party, and might consider his death a political expedient for consolidating the new settlement. It seemed to involve the army, which had openly abetted the act, and even the nation by its passive consent, in such inexpiable guilt toward the royal family, that neither common prudence nor a sense of shame would permit them to suffer its restoration. But by far the greater part of the regicides such considerations were either overlooked or kept in the background. Their more powerful motive was that fierce fanatical hatred of the king, the natural fruit of long civil dissension, inflamed by preachers more dark and sanguinary than those they addressed, and by a perverted study of the Jewish scriptures. They had been wrought to believe, not that his execution would be justified by state necessity or any such feeble grounds of human reasoning, but that it was a bounden duty, which with a safe conscience they could not neglect. Such was the persuasion of Ludlow and Hutchinson, the most respectable names among the regicides; both of them free from all suspicion of interestedness or hypocrisy, and less intoxicated than the rest by fanaticism.

§ 34. The execution of Charles I. has been mentioned in later ages by a few with unlimited praise — by some with faint and ambiguous censure—by most with vehement reprobation. My own judgment will possibly be anticipated by the reader of the preceding pages. I shall certainly not rest it on the imaginary sacredness and divine origin of royalty, nor even on the irresponsibility with which the law of almost every country invests the person of its sovereign. Far be it from me to contend that no cases may be conceived, that no instances may be found in history, wherein the sympathy of mankind and the sound principles of politic-

al justice would approve a public judicial sentence as the due reward of tyranny and perfidiousness. But we may confidently deny that Charles I. was thus to be singled out as a warning to tyrants. His offenses were not, in the worst interpretation, of that atrocious character which calls down the vengeance of insulted humanity, regardless of positive law. His government had been very arbitrary; but it may well be doubted whether any, even of his ministers, could have suffered death for their share in it, without introducing a principle of barbarous vindictiveness. Far from the sanguinary misanthropy of some monarchs, or the revengeful fury of others, he had in no instance displayed, nor does the minutest scrutiny since made into his character entitle us to suppose, any malevolent dispositions beyond some proneness to anger, and a considerable degree of harshness in his demeanor. As for the charge of having caused the bloodshed of the war, upon which, and not on any former misgovernment, his condemnation was grounded, it was as ill-established as it would have been insufficient. Well might the earl of Northumberland say, when the ordinance for the king's trial was before the lords, that the greatest part of the people of England were not yet satisfied whether the king levied war first against the houses, or the houses against him. The fact, in my opinion, was entirely otherwise. It is quite another question whether the parliament were justified in their resistance to the king's legal authority. But we may contend that, when Hotham, by their command, shut the gates of Hull against his sovereign, when the militia was called out in different counties by an ordinance of the two houses, both of which preceded by several weeks any levying of forces for the king, the bonds of our constitutional law were by them and their servants snapped asunder; and it would be the mere pedantry and chicane of political casuistry to inquire, even if the fact could be better ascertained, whether at Edgehill, or in the minor skirmishes that preceded, the first carbine was discharged by a cavalier or a roundhead. The aggressor in a war is not the first who uses force, but the first who renders force necessary.

But, whether we may think this war to have originated in the king's or the parliament's aggression, it is still evident that the former had a fair cause with the nation, a cause which it was no plain violation of justice to defend. He was supported by the greater part of the peers, by full one-third of the commons, by the principal body of the gentry, and a large proportion of other classes. If his adher-

ents did not form, as I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady, deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal law. Hence, if Charles, after having by a course of victories or the defection of the people prostrated all opposition, had abused his triumph by the execution of Essex or Hampden, Fairfax or Cromwell, I think that later ages would have disapproved of their deaths as positively, though not quite as vehemently, as they have of his own. The line is not easily drawn, in abstract reasoning, between the treason which is justly punished, and the social schism which is beyond the proper boundaries of law; but the civil war of England seems plainly to fall within the latter description. These objections strike me as unanswerable, even if the trial of Charles had been sanctioned by the voice of the nation through its legitimate representatives, or at least such a fair and full convention as might, in great necessity, supply the place of lawful authority. But it was, as we all know, the act of a bold but very small minority, who, having forcibly expelled their colleagues from parliament, had usurped, under the protection of a military force, that power which all England reckoned illegal. I can not perceive what there was in the imagined solemnity of this proceeding, in that insolent mockery of the forms of justice, accompanied by all unfairness and inhumanity in its circumstances, which can alleviate the guilt of the transaction; and if it be alleged that many of the regicides were firmly persuaded in their consciences of the right and duty of condemning the king, we may surely remember that private murderers have often had the same apology.

§ 35. In discussing each particular transaction in the life of Charles, as of any other sovereign, it is required by the truth of history to spare no just animadversion upon his faults; especially where much art has been employed by the writers most in repute to carry the stream of public prejudice in an opposite direction. But when we come to a general estimate of his character, we should act unfairly not to give their full weight to those peculiar circumstances of his condition in this worldly scene which tend to account for and extenuate his failings. The station of kings is, in a

moral sense, so unfavorable, that those who are least prone to servile admiration should be on their guard against the opposite error of an uncandid severity. There seems no fairer method of estimating the intrinsic worth of a sovereign than to treat him as a subject, and to judge, so far as the history of his life enables us, what he would have been in that more private and happier condition from which the chance of birth has excluded him. Tried by this test, we can not doubt that Charles I. would have been not altogether an amiable man, but one deserving of general esteem; his firm and conscientious virtues the same, his deviations from right far less frequent than upon the throne. It is to be pleaded for this prince, that his youth had breathed but the contaminated air of a profligate and servile court—that he had imbibed the lessons of arbitrary power from all who surrounded him—that he had been betrayed by a father's culpable blindness into the dangerous society of an ambitious, unprincipled favorite. To have maintained so much correctness of morality as his enemies confess, was a proof of Charles's virtuous dispositions; but his advocates are compelled also to own that he did not escape as little injured by the poisonous adulation to which he had listened. Of a temper by nature, and by want of restraint, too passionate, though not vindictive, and, though not cruel, certainly deficient in gentleness and humanity, he was entirely unfit for the very difficult station of royalty, and especially for that of a constitutional king. It is impossible to excuse his violations of liberty on the score of ignorance, especially after the Petition of Right; because his impatience of opposition from his council made it unsafe to give him any advice that thwarted his determination. His other great fault was want of sincerity—a fault that appeared in all parts of his life, and from which no one who has paid the subject any attention will pretend to exculpate him. Those, indeed, who know nothing but what they find in Hume may believe, on Hume's authority, that the king's contemporaries never deemed of imputing to him any deviation from good faith; as if the whole conduct of the parliament had not been evidently founded upon a distrust which on many occasions they very explicitly declared. But, so far as this insincerity was shown in the course of his troubles, it was a failing which untoward circumstances are apt to produce, and which the extreme hypocrisy of many among his adversaries might sometimes palliate. Few personages in history, we should recollect, have had so much of their actions revealed, and

commented upon, as Charles; it is perhaps a mortifying truth that those who have stood highest with posterity have seldom been those who have been most accurately known.

The turn of his mind was rather peculiar, and laid him open with some justice to very opposite censures—for an extreme obstinacy in retaining his opinion, and for an excessive facility in adopting that of others. But the apparent incongruity ceases, when we observe that he was tenacious of ends and irresolute as to means; better fitted to reason than to act; never swerving from a few main principles, but diffident of his own judgment in its application to the course of affairs. His chief talent was an acuteness in dispute; a talent, not usually much exercised by kings, but which the strange events of his life called into action. He had, unfortunately for himself, gone into the study most fashionable in that age, of polemical theology; and, though not at all learned, had read enough of the English divines to maintain their side of the current controversies with much dexterity. But this unkingly talent was a poor compensation for the continual mistakes of his judgment in the art of government and the conduct of his affairs.

§ 36. It seems natural not to leave untouched in this place the famous problem of the Icon Basiliké, which has been deemed an irrefragable evidence both of the virtues and the talents of Charles. But the authenticity of this work can hardly be any longer a question among judicious men. We have letters from Gauden and his family asserting it as his own in the most express terms, and making it the ground of a claim for reward. We know that the king's sons were both convinced that it was not their father's composition, and that Clarendon was satisfied of the same. If Gauden not only set up a false claim to so famous a work, but persuaded those nearest to the king to surrender that precious record, as it had been reckoned, of his dying sentiments, it was an instance of successful impudence which has hardly a parallel. But I should be content to rest the case on that internal evidence which has been so often alleged for its authenticity. The Icon has, to my judgment, all the air of a fictitious composition. Cold, stiff, elaborate, without a single allusion that bespeaks the superior knowledge of facts which the king must have possessed, it contains little but those rhetorical commonplaces which would suggest themselves to any forger. The prejudices of party, which exercise a strange influence in matters of taste, have caused this book to be extravagantly praised. It has doubtless a certain air of grave dig-

nity, and the periods are more artificially constructed than was usual in that age (a circumstance not in favor of its authenticity); but the style is encumbered with frigid metaphors, as is said to be the case in Gauden's acknowledged writings; and the thoughts are neither beautiful nor always exempt from affectation. The king's letters during his imprisonment, preserved in the Clarendon "State Papers," and especially one to his son, from which an extract is given in the "History of the Rebellion," are more satisfactory proofs of his integrity than the labored self-panegyrics of the Icon Basiliké.

PART II.

§ 1. Abolition of the Monarchy and of the House of Lords. § 2. Commonwealth. § 3. Schemes of Cromwell. His Conversations with Whitelock. § 4. Unpopularity of the Parliament. § 5. Their Fall. § 6. Little Parliament. § 7. Instrument of Government. Cromwell Protector. § 8. Parliament called by Cromwell. Dissolved by him. § 9. Intrigues of the King and his Party. § 10. Insurrectionary Movements in 1655. Rigorous Measures of Cromwell. § 11. His arbitrary Government. § 12. He summons another Parliament. Designs to take the Crown. The Project fails. But his Authority of Protector is augmented. § 13. He aims at forming a new House of Lords. § 14. His Death and Character. § 15. Richard, his Son, succeeds him. § 16. Is supported by some prudent Men. § 17. But opposed by a Coalition. § 18. Calls a Parliament. The Army overthrow both. § 19. Long Parliament restored. Expelled again, and again restored. § 20. Impossibility of establishing a Republic. § 21. Intrigues of the Royalists. They unite with the Presbyterians. § 22. Conspiracy of 1659. § 23. Interference of Monk. His Dissimulation. Secluded Members return to their Seats. § 24. Difficulties about the Restoration. § 25. Whether previous Conditions required. § 26. Plan of reviving the Treaty of Newport inexpedient. § 27. Difficulty of framing Conditions. § 28. Conduct of the Convention about this not blamable. § 29. Except in respect of the Militia. § 30. Conduct of Monk.

§ 1. The death of Charles I. was pressed forward rather through personal hatred and superstition than out of any notion of its necessity to secure a republican administration. That party was still so weak that the commons came more slowly, and with more difference of judgment, than might be expected, to an absolute renunciation of monarchy. They voted, indeed, that the people are, under God, the original of all just power; and that whatever is enacted by the commons in parliament hath the force of law, although the consent and concurrence of the king or house of peers be not had thereto; terms manifestly not exclusive of the nominal continuance of the two latter. They altered the public style from the king's name to that of the parliament, and gave other indications of their intentions; but the vote for the abolition of monarchy did not pass till the 7th February, after a debate, according to Whitelock, but without a division.

The house of lords, still less able than the crown to withstand the inroads of democracy, fell by a vote of the commons at the same time. They resolved that the house of peers was useless and dangerous, and ought to be abolished. It should be noticed that there was no intention of taking away the dignity of peerage; the lords, throughout the whole duration of the commonwealth, retained their titles, not only in common usage, but in all legal and parliamentary documents.

§ 2. Thus by military force, with the approbation of an inconceivably small proportion of the people, the king was put to death, the ancient fundamental laws were overthrown, and a mutilated house of commons, wherein very seldom more than seventy or eighty sat, was invested with the supreme authority. So little countenance had these late proceedings, even from those who seemed of the ruling faction, that, when the executive council of state, consisting of forty-one, had been nominated, and a test was proposed to them, declaring their approbation of all that had been done about the king and the kingly office and about the house of lords, only nineteen would subscribe it, though there were fourteen regicides on the list. It was agreed at length that they should subscribe it only as to the future proceedings of the commons. With such dissatisfaction at head-quarters there was little to hope from the body of the nation. Hence, when an engagement was tendered to all civil officers and beneficed clergy, containing only a promise to live faithful to the commonwealth, as it was established without a king or house of lords (though the slightest test of allegiance that any government could require), it was taken with infinite reluctance, and, in fact, refused by very many, the presbyterian ministers especially showing a determined averseness to the new republican organization.

This, however, was established (such is the dominion of the sword) far beyond the control of any national sentiment. Thirty thousand veteran soldiers guaranteed the mock parliament they had permitted to reign. The sectaries, a numerous body, and still more active than numerous, possessed, under the name of committees for various purposes appointed by the house of commons, the principal local authorities, and restrained by a vigilant scrutiny the murmurs of a disaffected majority. Love, an eminent presbyterian minister, lost his head for a conspiracy by the sentence of a high court of justice, a tribunal that superseded trial by jury. His death struck horror and consternation into that arrogant

priesthood who had begun to fancy themselves almost beyond the scope of criminal law. The cavaliers were prostrate in the dust, and, anxious to retrieve something from the wreck of their long-sequestered estates, had generally little appetite to embark afresh in a hopeless cause; besides that the mutual animosities between their party and the presbyterians were still too irreconcilable to admit of any sincere co-operation. Hence neither made any considerable effort in behalf of Charles on his march, or rather flight, into England; a measure, indeed, too palpably desperate for prudent men who had learned the strength of their adversaries; and the great victory of Worcester consummated the triumph of the infant commonwealth, or rather of its future master.

§ 3. A train of favoring events, more than any deep-laid policy, had now brought sovereignty within the reach of Cromwell. His first schemes of ambition may probably have extended no further than a title and estate, with a great civil and military command in the king's name. Power had fallen into his hands because they alone were fit to wield it; he was taught by every succeeding event his own undeniable superiority over his contemporaries in martial renown, in civil prudence, in decision of character, and in the public esteem which naturally attached to these qualities. Perhaps it was not till after the battle of Worcester that he began to fix his thoughts, if not on the dignity of royalty, yet on an equivalent right of command. Two remarkable conversations, in which Whitelock[1] bore a part, seem to place beyond controversy the nature of his designs. About the end of 1651, Whitelock himself, St. John, Widdrington, Lenthall, Harrison, Desborough, Fleetwood, and Whalley, met Cromwell, at his own request, to consider the settlement of the nation. The four former were in favor of monarchy, Whitelock inclining to Charles, Widdrington and others to the duke of Gloucester; Desborough and Whalley were against a single person's government, and Fleetwood uncertain. Cromwell, who had evidently procured this conference in order to sift the inclinations of so many leading men, and to give some intimation of his own, broke it up with remarking that, if it might be done with safety and preservation of their rights as Englishmen and Christians, a settlement of somewhat with monarchical power in it would be very effectual. The observation he here made of a disposition among the lawyers to elect the duke of Gloucester, as being exempt

[1] Whitelock was one of the lord's commissioners of the great seal.

by his youth from the prepossessions of the two elder brothers, may, perhaps, have put Cromwell on releasing him from confinement, and sending him to join his family beyond sea.

Twelve months after this time, in a more confidential discourse with Whitelock alone, the general took occasion to complain both of the chief officers of the army and of the parliament; the first, as inclined to factious murmurings, and the second, as engrossing all offices to themselves, divided into parties, delaying business, guilty of gross injustice and partiality, and designing to perpetuate their own authority. Whitelock, confessing part of this, urged that, having taken commissions from them as the supreme power, it would be difficult to find means to restrain them. "What," said Cromwell, "if a man should take upon him to be king?" "I think," answered Whitelock, "that remedy would be worse than the disease." "Why," rejoined the other, "do you think so?" He then pointed out that the statute of Henry VII. gave a security to those who acted under a king which no other government could furnish; and that the reverence paid by the people to that title would serve to curb the extravagancies of those now in power. Whitelock replied, that their friends having engaged in a persuasion, though erroneous, that their rights and liberties would be better preserved under a commonwealth than a monarchy, this state of the question would be wholly changed by Cromwell's assumption of the title, and it would become a private controversy between his family and that of the Stuarts. Finally, on the other's encouragement to speak fully his thoughts, he told him "that no expedient seemed so desirable as a private treaty with the king, in which he might not only provide for the security of his friends and the greatness of his family, but set limits to monarchical power, keeping the command of the militia in his own hands." Cromwell merely said, "that such a step would require great consideration;" but broke off with marks of displeasure, and consulted Whitelock much less for some years afterward.

§ 4. These projects of usurpation could not deceive the watchfulness of those whom Cromwell pretended to serve. He had on several occasions thrown off enough of his habitual dissimulation to show the commonwealth's men that he was theirs only by accident, with none of their fondness for republican polity. The parliament in its present wreck contained few leaders of superior ability, but a natural instinct would dictate to such an assembly the distrust of a popular general, even if there had been less to alarm them in his be-

havior. They had no means, however, to withstand him. The creatures themselves of military force, their pretensions to direct or control the army could only move scorn or resentment. Their claim to a legal authority, and to the name of representatives of a people who rejected and abhorred them, was perfectly impudent. When the house was fullest their numbers did not much exceed one hundred; but the ordinary divisions, even on subjects of the highest moment, show an attendance of but fifty or sixty members. They had retained in their hands, notwithstanding the appointment of a council of state, most of whom were from their own body, a great part of the executive government, especially the disposal of offices. These they largely shared among themselves or their dependents; and in many of their votes gave occasion to such charges of injustice and partiality as, whether true or false, will attach to a body of men so obviously self-interested.

The republican interest in the nation was almost wholly composed of two parties, both offshoots deriving strength from the great stock of the army; the levelers, of whom Lilburne and Wildman are the most known, and the anabaptists, fifth-monarchy men, and other fanatical sectaries, headed by Harrison, Hewson, Overton, and a great number of officers. Though the sectaries seemed to build their revolutionary schemes more on their own religious views than the levelers, they coincided in most of their objects and demands. An equal representation of the people in short parliaments, an extensive alteration of the common law, the abolition of tithes, and indeed of all regular stipends to the ministry, a full toleration of religious worship, were reformations which they concurred in requiring as the only substantial fruits of their arduous struggle. Some among the wilder sects dreamed of overthrowing all civil institutions. These factions were not without friends in the commons. But the greater part were not inclined to gratify them by taking away the provision of the church, and much less to divest themselves of their own authority. They voted indeed that tithes should cease as soon as a competent maintenance should be otherwise provided for the clergy. They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay. They proceeded rather slowly and re-

luctantly to frame a scheme for future parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterward carried into effect by Cromwell.

§ 5. It was with much delay and difficulty, amidst the loud murmurs of their adherents, that they could be brought to any vote in regard to their own dissolution. It passed on November 17, 1651, after some very close divisions, that they should cease to exist as a parliament on November 3, 1654. The republicans out-of-doors, who deemed annual, or at least biennial, parliaments essential to their definition of liberty, were indignant at so unreasonable a prolongation. Thus they forfeited the good-will of the only party on whom they could have relied. Cromwell dexterously aggravated their faults: he complained of their delaying the settlement of the nation; he persuaded the fanatics of his concurrence in their own schemes; the parliament, in turn, conspired against his power, and, as the conspiracies of so many can never be secret, let it be seen that one or other must be destroyed—thus giving his forcible expulsion of them the pretext of self-defense. They fell with no regret, or rather with much joy of the nation, except a few who dreaded more from the alternative of military usurpation or anarchy than from an assembly which still retained the names and forms so precious in the eyes of those who adhere to the ancient institutions of their country.

§ 6. It was now the deep policy of Cromwell to render himself the sole refuge of those who valued the laws, or the regular ecclesiastical ministry, or their own estates, all in peril from the mad enthusiasts who were in hopes to prevail. These he had admitted into that motley convention of one hundred and twenty persons, sometimes called Barebone's parliament, but more commonly the little parliament, on whom his council of officers pretended to devolve the government, mingling them with a sufficient proportion of a superior class whom he could direct. This assembly took care to avoid the censure which their predecessors had incurred, by passing a good many bills, and applying themselves with a vigorous hand to the reformation of what their party deemed the most essential grievances, those of the law and of the church. They voted the abolition of the court of chancery, a measure provoked by its insufferable delay, its engrossing of almost all suits, and the uncertainty of its decisions. They appointed a committee to consider of

a new body of the law, without naming any lawyer upon it. They nominated a set of commissioners to preside in courts of justice, among whom they with difficulty admitted two of that profession; they irritated the clergy by enacting that marriages should be solemnized before justices of the peace; they alarmed them still more by manifesting a determination to take away their tithes, without security for an equivalent maintenance. Thus, having united against itself these two powerful bodies, whom neither kings nor parliaments in England have in general offended with impunity, this little synod of legislators was ripe for destruction. Their last vote was to negative a report of their own committee, recommending that such as should be approved as preachers of the gospel should enjoy the maintenance already settled by law; and that the payment of tithes, as a just property, should be enforced by the magistrates. The house having, by the majority of two, disagreed with this report, the speaker, two days after, having secured a majority of those present, proposed the surrender of their power into the hands of Cromwell, who put an end to the opposition of the rest by turning them out-of-doors.

§ 7. It can admit of no doubt that the despotism of a wise man is more tolerable than that of political or religious fanatics; and it rarely happens that there is any better remedy in revolutions which have given the latter an ascendant. Cromwell's assumption, therefore, of the title of protector was a necessary and wholesome usurpation, however he may have caused the necessity; it secured the nation from the mischievous lunacy of the anabaptists, and from the more cool-blooded tyranny of that little oligarchy which arrogated to itself the name of commonwealth's men. Though a gross and glaring evidence of the omnipotence of the army, the instrument under which he took his title accorded to him no unnecessary executive authority. The sovereignty still resided in the parliament; he had no negative voice on their laws. Until the meeting of the next parliament a power was given him of making temporary ordinances; but this was not, as Hume, on the authority of Clarendon and Warwick, has supposed, and as his conduct, if that were any proof of the law, might lead us to infer, designed to exist in future intervals of the legislature.[2] It would be scarcely worth while, however, to pay much attention to a form of government which was so little regarded, except as it marks

[2] Cromwell made good use of this temporary power. The union of Scotland with England was by one of these ordinances, April 12.

the jealousy of royal power, which those most attached to Cromwell, and least capable of any proper notions of liberty, continued to entertain.

§ 8. In the ascent of this bold usurper to greatness he had successively employed and thrown away several of the powerful factions who distracted the nation. He had encouraged the levelers and persecuted them; he had flattered the long parliament and betrayed it; he had made use of the sectaries to crush the commonwealth; he had spurned the sectaries in his last advance to power. These, with the royalists and the presbyterians, forming in effect the whole people, though too disunited for such a coalition as must have overthrown him, were the perpetual, irreconcilable enemies of his administration. Master of his army, which he well knew how to manage, surrounded by a few deep and experienced counselors, furnished by his spies with the completest intelligence of all designs against him, he had no great cause of alarm from open resistance. But he was bound by the instrument of government to call a parliament; and in any parliament his adversaries must be formidable. He adopted in both those which he summoned the reformed model already determined; limiting the number of representatives to 400, to be chosen partly in the counties, according to their wealth or supposed population, by electors possessing either freeholds or any real or movable property to the value of £200; partly by the more considerable boroughs, in whose various rights of election no change appears to have been made. This alteration, conformable to the equalizing principles of the age, did not produce so considerable a difference in the persons returned as it perhaps might at present. The court party, as those subservient to him were called, were powerful through the subjection of the electors to the army. But they were not able to exclude the presbyterian and republican interests; the latter, headed by Bradshaw, Haslerig, and Scott, eager to thwart the power which they were compelled to obey. Hence they began by taking into consideration the whole instrument of government; and even resolved themselves into a committee to debate its leading article, the protector's authority. Cromwell, his supporters having lost this question on a division of 141 to 136, thought it time to interfere. He gave them to understand that the government by a single person and a parliament was a fundamental principle, not subject to their discussion; and obliged every member to a recognition of it, solemnly promising neither to attempt nor to con-

cur in any alteration of that article. The commons voted, however, that this recognition should not extend to the entire instrument, consisting of forty-two articles; and went on to discuss them with such heat and prolixity that, after five months, the limited term of their session, the protector, having obtained the ratification of his new scheme neither so fully nor so willingly as he desired, particularly having been disappointed by the great majority of 200 to 60, which voted the protectorate to be elective, not hereditary, dissolved the parliament with no small marks of dissatisfaction.

§ 9. The banished king, meanwhile, began to recover a little of that political importance which the battle of Worcester had seemed almost to extinguish. So ill supported by his English adherents on that occasion, so incapable, with a better army than he had any prospect of ever raising again, to make a stand against the genius and fortune of the usurper, it was vain to expect that he could be restored by any domestic insurrection, until the disunion of the prevailing factions should offer some more favorable opportunity. But this was too distant a prospect for his court of starving followers. He had from the beginning looked around for foreign assistance. But France was distracted by her own troubles; Spain deemed it better policy to cultivate the new commonwealth; and even Holland, though engaged in a dangerous war with England, did not think it worth while to accept his offer of joining her fleet, in order to try his influence with the English seamen. Totally unscrupulous as to the means by which he might reign, even at the moment that he was treating to become the covenanted king of Scotland, with every solemn renunciation of popery, Charles had recourse to a very delicate negotiation, which deserves remark, as having led, after a long course of time, but by gradual steps, to the final downfall of his family. With the advice of Ormond, and with the concurrence of Hyde, he attempted to interest the pope (Innocent X.) on his side, as the most powerful intercessor with the catholic princes of Europe. For this purpose it was necessary to promise toleration at least to the catholics. The king's ambassadors to Spain in 1650, Cottington and Hyde, and other agents dispatched to Rome at the same time, were empowered to offer an entire repeal of the penal laws. The king himself, some time afterward, wrote a letter to the pope, wherein he repeated this assurance. That court, however, well aware of the hereditary duplicity of the Stuarts, received his overtures with haughty contempt. The pope returned no an-

swer to the king's letter; but one was received after many months from the general of the jesuits, requiring that Charles should declare himself a catholic, since the goods of the church could not be lavished for the support of an heretical prince. Even after this insolent refusal, the wretched exiles still clung at times to the vain hope of succor which as protestants and Englishmen they could not honorably demand. But many of them remarked too clearly the conditions on which assistance might be obtained; the court of Charles, openly or in secret, began to pass over to the catholic church; and the contagion soon spread to the highest places.

In the year 1654 the royalist intrigues in England began to grow more active and formidable through the accession of many discontented republicans. Though there could be no coalition, properly speaking, between such irreconcilable factions, they came into a sort of tacit agreement, as is not unusual, to act in concert for the only purpose they entertained alike, the destruction of their common enemy. Major Wildman, a name not very familiar to the general reader, but which occurs perpetually, for almost half a century, when we look into more secret history, one of those dark and restless spirits who delight in the deep game of conspiracy against every government, seems to have been the first mover of this unnatural combination. He had been early engaged in the schemes of the levelers, and was exposed to the jealous observation of the ruling powers. It appears most probable that his views were to establish a commonwealth, and to make the royalists his dupes. In his correspondence, however, with Brussels, he engaged to restore the king. Both parties were to rise in arms against the new tyranny; and the nation's temper was tried by clandestine intrigues in almost every county. Greater reliance, however, was placed on the project of assassinating Cromwell. Neither party were by any means scrupulous on this score: if we have not positive evidence of Charles's concurrence in this scheme, it would be preposterous to suppose that he would have been withheld by any moral hesitation. It is frequently mentioned without any disapprobation by Clarendon in his private letters; and, as the royalists certainly justified the murders of Ascham and Dorislaus, they could not in common sense or consistency have scrupled one so incomparably more capable of defense. A Mr. Gerard suffered death for one of these plots to kill Cromwell; justly sentenced, though by an illegal tribunal.

§ 10. In the year 1655, Penruddock, a Wiltshire gentle-

man, with a very trifling force, entered Salisbury at the time of the assizes, and, declaring for the king, seized the judge and the sheriff. This little rebellion, meeting with no resistance from the people, but a supineness equally fatal, was soon quelled. It roused Cromwell to secure himself by an unprecedented exercise of power. In possession of all the secrets of his enemies, he knew that want of concert or courage had alone prevented a general rising, toward which indeed there had been some movements in the midland counties. He was aware of his own unpopularity, and the national bias toward the exiled king. Juries did not willingly convict the sharers in Penruddock's rebellion. To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general as a sort of military magistrate, responsible for the subjection of his prefecture. These were eleven in number, men bitterly hostile to the royalist party, and insolent toward all civil authority. They were employed to secure the payment of a tax of ten per cent., imposed by Cromwell's arbitrary will on those who had ever sided with the king during the late wars, where their estates exceeded £100 per annum. The major-generals, in their correspondence printed among Thurloe's papers, display a rapacity and oppression beyond their master's. They complain that the number of those exempted is too great; they press for harsher measures; they incline to the unfavorable construction in every doubtful case; they dwell on the growth of malignancy and the general disaffection. It was not, indeed, likely to be mitigated by this unparalleled tyranny. All illusion was now gone as to the pretended benefits of the civil war. It had ended in a despotism, compared to which all the illegal practices of former kings, all that had cost Charles his life and crown, appeared as dust in the balance. For what was ship-money, a general burden, by the side of the present decimation of a single class, whose offense had long been expiated by a composition and effaced by an act of indemnity? or were the excessive punishments of the star-chamber so odious as the capital executions inflicted without trial by peers, whenever it suited the usurper to erect his high court of justice? A sense of present evils not only excited a burning desire to live again under the ancient monarchy, but obliterated, especially in the new generation, that had no distinct remembrance of them, the apprehension of its former abuses.

§ 11. If this decimation of the royalists could pass for an act of severity toward a proscribed faction, in which the rest of the nation might fancy themselves not interested, Cromwell did not fail to show that he designed to exert an equally despotic command over every man's property. With the advice of the council, he had imposed, or as I conceive (for it is not clearly explained) continued, a duty on merchandise beyond the time limited by law. A Mr. George Cony having refused to pay this tax, it was enforced from him, on which he sued the collector. Cromwell sent his counsel, Maynard, Twisden, and Wyndham, to the Tower, who soon petitioned for liberty, and abandoned their client. Rolle, the chief-justice, when the cause came on, dared not give judgment against the protector; yet, not caring to decide in his favor, postponed the case till the next term, and meanwhile retired from the bench. Glyn, who succeeded him upon it, took care to have this business accommodated with Cony, who, at some loss of public reputation, withdrew his suit. Sir Peter Wentworth, having brought a similar action, was summoned before the council, and asked if he would give it up. "If you command me," he replied to Cromwell, "I must submit;" which the protector did, and the action was withdrawn.

Though it can not be said that such an interference with the privileges of advocates or the integrity of judges was without precedents in the times of the Stuarts, yet it had never been done in so public or shameless a manner. Several other instances wherein the usurper diverted justice from its course, or violated the known securities of Englishmen, will be found in most general histories; not to dwell on that most flagrant of all, the erection of his high court of justice, by which Gerard and Vowel in 1654, Slingsby and Hewit in 1658, were brought to the scaffold. I can not, therefore, agree in the praises which have been showered upon Cromwell for the just administration of the laws under his dominion. That, between party and party, the ordinary civil rights of men were fairly dealt with, is no extraordinary praise; and it may be admitted that he filled the benches of justice with able lawyers, though not so considerable as those of the reign of Charles II.; but it is manifest that, so far as his own authority was concerned, no hereditary despot, proud in the crimes of a hundred ancestors, could more have spurned at every limitation than this soldier of a commonwealth.

§ 12. Amidst so general a hatred, trusting to the effect of an equally general terror, the protector ventured to sum-

mon a parliament in 1656. Besides the common necessities for money, he had doubtless in his head that remarkable scheme which was developed during its session. Even the despotic influence of his major-generals, and the political annihilation of the most considerable body of the gentry, then laboring under the imputation of delinquency for their attachment to the late king, did not enable him to obtain a secure majority in the assembly; and he was driven to the audacious measure of excluding above ninety members, duly returned by their constituents, from taking their seats. The excluded members, consisting partly of the republican, partly of the presbyterian factions, published a remonstrance in a very high strain, but obtained no redress.

Cromwell, like so many other usurpers, felt his position too precarious, or his vanity ungratified, without the name which mankind have agreed to worship. He had, as evidently appears from the conversations recorded by Whitelock, long since aspired to this titular, as well as to the real, pre-eminence; and the banished king's friends had contemplated the probability of his obtaining it with dismay. Affectionate toward his family, he wished to assure the stability of his son's succession, and perhaps to please the vanity of his daughters. It was indeed a very reasonable object with one who had already advanced so far. His assumption of the crown was desirable to many different classes; to the lawyers, who, besides their regard for the established constitution, knew that an ancient statute would protect those who served a de facto king in case of a restoration of the exiled family; to the nobility, who perceived that their legislative right must immediately revive; to the clergy, who judged the regular ministry more likely to be secure under a monarchy; to the people, who hoped for any settlement that would put an end to perpetual changes; to all of every rank and profession who dreaded the continuance of military despotism, and demanded only the just rights and privileges of their country. A king of England could succeed only to a bounded prerogative, and must govern by the known laws; a protector, as the nation had well felt, with less normal authority, had all the sword could confer. And, though there might be little chance that Oliver would abate one jot of a despotism for which not the times of the Tudors could furnish a precedent, yet his life was far worn, and under a successor it was to be expected that future parliaments might assert again all those liberties for which they had contended against Charles.

The scheme, however, of founding a new royal line failed of accomplishment, as is well known, through his own caution, which deterred him from encountering the decided opposition of his army.[3] Some of his contemporaries seem to have deemed this abandonment, or more properly suspension, of so splendid a design rather derogatory to his firmness. But few men were better judges than Cromwell of what might be achieved by daring. It is certainly not impossible that, by arresting Lambert, Whalley, and some other generals, he might have crushed for the moment any tendency to open resistance. But the experiment would have been infinitely hazardous. He had gone too far in the path of violence to recover the high-road of law by any short cut. King or protector, he must have intimidated every parliament, or sunk under its encroachments. A new-modeled army might have served his turn; but there would have been great difficulties in its formation. It had from the beginning been the misfortune of his government that it rested on a basis too narrow for its safety. For two years he had reigned with no support but the independent sectaries and the army. The army or its commanders becoming odious to the people, he had sacrificed them to the hope of popularity, by abolishing the civil prefectures of the major-generals, and permitting a bill for again decimating the royalists to be thrown out of the house. Their disgust and resentment, excited by an artful intriguer, Lambert, who aspired at least to the succession of the protectorship, found scope in the new project of monarchy, naturally obnoxious to the prejudices of true fanatics, who still fancied themselves to have contended for a republican liberty. We find that even Fleetwood, allied by marriage to Cromwell, and not involved in the discontent of the major-generals, in all the sincerity of his clouded understanding, revolted from the invidious title, and would have retired from service had it been assumed. There seems, therefore, reason to think that Cromwell's refusal of the crown was an inevitable mortification. But he undoubtedly did not lose sight of the object for the short remainder of his life.

The fundamental charter of the English commonwealth, under the protectorship of Cromwell, had been the instrument of government, drawn up by the council of officers in December, 1653, and approved with modifications by the parliament of the next year. It was now changed to the "Petition and Advice," tendered to him by the present par-

[3] The major-generals, or at least many of them, joined the opposition to Cromwell's royalty.

liament in May, 1657, which made very essential innovations in the frame of polity. Though he bore, as formerly, the name of lord protector, we may say, speaking according to theoretical classification, and without reference to his actual exercise of power, which was nearly the same as before, that the English government in the first period should be ranged in the order of republics, though with a chief magistrate at its head; but that from 1657 it became substantially a monarchy, and ought to be placed in that class, notwithstanding the difference in the style of its sovereign. The Petition and Advice had been compiled with a constant respect to that article which conferred the royal dignity on the protector; and when this was withdrawn at his request, the rest of the instrument was preserved with all its implied attributions of sovereignty. The style is that of subjects addressing a monarch; the powers it bestows, the privileges it claims, are supposed, according to the expressions employed, the one to be already his own, the other to emanate from his will. The necessity of his consent to laws, though nowhere mentioned, seems to have been taken for granted. An unlimited power of appointing a successor, unknown even to constitutional kingdoms, was vested in the protector. He was inaugurated with solemnities applicable to monarchs; and what of itself is a sufficient test of the monarchical and republican species of government, an oath of allegiance was taken by every member of parliament to the protector singly, without any mention of the commonwealth. It is surely, therefore, no paradox to assert that Oliver Cromwell was de facto sovereign of England during the interval from June, 1657, to his death in September, 1658.

§ 13. The zealous opponents of royalty could not be insensible that they had seen it revive in every thing except a title, which was not likely to remain long behind. It was too late, however, to oppose the first magistrate's personal authority. But there remained one important point of contention, which the new constitution had not fully settled. It was therein provided that the parliament should consist of two houses—namely, the commons, and what they always termed, with an awkward generality, the other house. This was to consist of not more than seventy, nor less than forty persons, to be nominated by the protector, and, as it stood at first, to be approved by the commons. But, before the close of the session, the court party prevailed so far as to procure the repeal of this last condition; and Cromwell accordingly issued writs of summons to persons of various par-

ties, a few of the ancient peers, a few of his adversaries, whom he hoped to gain over, or at least to exclude from the commons, and of course a majority of his steady adherents. To all these he gave the title of lords, and in the next session their assembly denominated itself the lords' house. This measure encountered considerable difficulty. The republican party, almost as much attached to that vote which had declared the house of lords useless as to that which had abolished the monarchy, and well aware of the intimate connection between the two, resisted the assumption of this aristocratic title, instead of that of the other house, which the Petition and Advice had sanctioned. The real peers feared to compromise their hereditary right by sitting in an assembly where the tenure was only during life; and disdained some of their colleagues, such as Pride and Hewson, low-born and insolent men, whom Cromwell had rather injudiciously bribed with this new nobility; though, with these few exceptions, his house of lords was respectably composed. Hence, in the short session of January, 1658, wherein the late excluded members were permitted to take their seats, so many difficulties were made about acknowledging the lords' house by that denomination, that the protector hastily and angrily dissolved the parliament.

It is a singular part of Cromwell's system of policy that he would neither reign with parliaments nor without them; impatient of an opposition which he was sure to experience, he still never seems to have meditated the attainment of a naked and avowed despotism. This was probably due to his observation of the ruinous consequences that Charles had brought on himself by that course, and his knowledge of the temper of the English, never content without the exterior forms of liberty, as well as to the suggestions of counselors who were not destitute of concern for the laws. He had also his great design yet to accomplish, which could only be safely done under the sanction of a parliament. A very short time, accordingly, before his death, we find that he had not only resolved to meet once more the representatives of the nation, but was tampering with several of the leading officers to obtain their consent to an hereditary succession. The majority, however, of a council of nine, to whom he referred this suggestion, would only consent that the protector for the time being should have the power of nominating his successor; a vain attempt to escape from that regal form of government which they had been taught to abhor. But a sudden illness, of a nature seldom fatal, except to a constitution

already shattered by fatigue and anxiety, rendered abortive all these projects of Cromwell's ambition.

§ 14. He left a fame behind him proportioned to his extraordinary fortunes and the great qualities which sustained them; still more, perhaps, the admiration of strangers than of his country, because that sentiment was less alloyed by hatred, which seeks to extenuate the glory that irritates it. The nation itself forgave much to one who had brought back the renown of her ancient story, the traditions of Elizabeth's age, after the ignominious reigns of her successors. This contrast with James and Charles in their foreign policy gave additional lustre to the era of the protectorate. There could not but be a sense of national pride to see an Englishman, but yesterday raised above the many, without one drop of blood in his veins which the princes of the earth could challenge as their own, receive the homage of those who acknowledge no right to power, and hardly any title to respect, except that of prescription. The sluggish pride of the court of Spain, the mean-spirited cunning of Mazarin, the irregular imagination of Christina, sought with emulous ardor the friendship of our usurper. He had the advantage of reaping the harvest which he had not sown, by an honorable treaty with Holland, the fruit of victories achieved under the parliament. But he still employed the great energies of Blake in the service for which he was so eminently fitted; and it is just to say that the maritime glory of England may first be traced from the era of the commonwealth in a track of continuous light. The oppressed protestants in catholic kingdoms, disgusted at the lukewarmness and half-apostasy of the Stuarts, looked up to him as their patron and mediator. Courted by the two rival monarchies of Europe, he seemed to threaten both with his hostility; and when he declared against Spain, and attacked her West India possessions, with little pretense certainly of justice, but not by any means, as, I conceive, with the impolicy sometimes charged against him, so auspicious was his star that the very failure and disappointment of that expedition obtained a more advantageous possession for England than all the triumphs of her former kings.

Notwithstanding this external splendor, which has deceived some of our own and most foreign writers, it is evident that the submission of the people to Cromwell was far from peaceable or voluntary. His strong and skillful grasp kept down a nation of enemies that must naturally, to judge from their numbers and inveteracy, have overwhelmed him.

It required a dexterous management to play with the army, and without the army he could not have existed as sovereign for a day. Yet it seems improbable that, had Cromwell lived, any insurrection or conspiracy, setting aside assassination, could have overthrown a possession so fenced by systematic vigilance, by experienced caution, by the respect and terror that belonged to his name. The royalist and republican intrigues had gone on for several years without intermission; but every part of their designs was open to him; and it appears that there was not courage or rather temerity sufficient to make any open demonstration of so prevalent a disaffection.

§ 15. The death of a great man, even in the most regular course of affairs, seems always to create a sort of pause in the movement of society; it is always a problem to be solved only by experiment, whether the mechanism of government may not be disordered by the shock, or have been deprived of some of its moving powers. But what change could be so great as that from Oliver Cromwell to his son! from one, beneath the terror of whose name a nation had cowered and foreign princes grown pale, one trained in twenty eventful years of revolution, the first of his age in the field or in council, to a young man fresh from a country life, uneducated, unused to business, as little a statesman as a soldier, and endowed by nature with capacities by no means above the common. It seems to have been a mistake in Oliver, that with the projects he had long formed in his eldest son's favor, he should have taken so little pains to fashion his mind and manners for the exercise of sovereign power, while he had placed the second in a very eminent and arduous station; or that, if he despaired of Richard's capacity, he should have trusted him to encounter those perils of disaffection and conspiracy which it had required all his own vigilance to avert. But, whatever might be his plans, the sudden illness which carried him from the world left no time for completing them. The Petition and Advice had simply empowered him to appoint a successor, without prescribing the mode. It appeared consonant to law and reason that so important a trust should be executed in a notorious manner, and by a written instrument; or, if a verbal nomination might seem sufficient, it was at least to be expected that this should be authenticated by solemn and indisputable testimony. No proof, however, was ever given of Richard's appointment by his father, except a recital in the proclamation of the privy council, which, whether well founded or otherwise, did not carry conviction

to the minds of the people; and this, even if we call it but an informality, aggravated the numerous legal and natural deficiencies of his title to the government.

§ 16. This very difference, however, in the personal qualifications of the father and the son, procured the latter some friends whom the former had never been able to gain. Many of the presbyterian party began to see the finger of God, as they called it, in his peaceable accession, and to think they owed subjection to one who came in neither by regicide, nor hypocrisy, nor violence. Some cool-headed and sincere friends of liberty entertained similar opinions. Pierpont, one of the wisest men in England, who had stood aloof from the protector's government till the scheme of restoring monarchy came into discussion, had great hopes of settling the nation in the enjoyment of its liberties under the young man. He believed that the restoration of the ancient family could not be effected without the ruin of the people's liberty, and of all who had been its champions. He acted accordingly on those principles; and became, as well as his friend St. John, who had been discountenanced by Oliver, a steady supporter of the young protector's administration. These two, with Thurloe, Whitelock, lord Broghill, and a very few more, formed a small phalanx of experienced counselors around his unstable throne. And I must confess that their course of policy in sustaining Richard's government appears to me the most judicious that, in the actual circumstances, could have been adopted. Time would have worn away the stains of ignoble birth and criminal usurpation; and the young man, whose misfortune has subjected him to rather an exaggerated charge of gross incapacity, would probably have reigned as well as most of those who are born in the purple.

§ 17. But this termination was defeated by the combination of some who knew not what they wished, and of some who wished what they could never attain. The general officers who had been well content to make Cromwell the first of themselves, or greater than themselves by their own creation, had never forgiven his manifest design to reign over them as one of a superior order, and owing nothing to their pleasure. They had begun to cabal during his last illness. Though they did not oppose Richard's succession, they continued to hold meetings, not quite public, but exciting intense alarm in his council. As if disdaining the command of a clownish boy, they proposed that the station of lord general should be separated from that of protector, with the

power over all commissions in the army, and conferred on Fleetwood; who, though his brother-in-law, was a certain instrument in their hands. The vain, ambitious Lambert, aspiring, on the credit of some military reputation, to wield the sceptre of Cromwell, influenced this junto; while the commonwealth's party, some of whom were, or had been, in the army, drew over several of these ignorant and fanatical soldiers. Thurloe describes the posture of affairs in September and October, while all Europe was admiring the peaceable transmission of Oliver's power, as most alarming; and it may almost be said that Richard had already fallen when he was proclaimed the lord protector of England.

§ 18. It was necessary to summon a parliament on the usual score of obtaining money. But some of the council feared a parliament almost as much as they did the army. They called one, however, to meet January 27, 1659, issuing writs in the ordinary manner to all boroughs which had been accustomed to send members, and consequently abandoning the reformed model of Cromwell. This Ludlow attributes to their expectation of greater influence among the small boroughs; but it may possibly be ascribed still more to a desire of returning by little and little to the ancient constitution, by eradicating the revolutionary innovations. The new parliament consisted of courtiers, as the Cromwell party were always denominated, of presbyterians, among whom some of cavalier principles crept in, and of republicans; the two latter nearly balancing, with their united weight, the ministerial majority. They began with an oath of allegiance to the protector, as presented by the late parliament, which, as usual in such cases, his enemies generally took without scruple. But upon a bill being offered for the recognition of Richard as the undoubted lord protector and chief magistrate of the commonwealth, they made a stand against the word recognize, which was carried with difficulty, and caused him the mortification of throwing out the epithet undoubted. They subsequently discussed his negative voice in passing bills, which had been purposely slurred over in the Petition and Advice; but now every thing was disputed. The thorny question as to the powers and privileges of the other house came next into debate. It was carried by 177 to 113 to transact business with them. Upon the whole, the court party, notwithstanding this coalition of very heterogeneous interests against them, were sufficiently powerful to disappoint the hopes which the royalist intriguers had entertained. A strong body of lawyers, led by Maynard, adhered to

the government, which was supported also on some occasions by a part of the presbyterian interest, or, as then called, the moderate party; and Richard would probably have concluded the session with no loss of power, if either he or his parliament could have withstood the more formidable cabal of Wallingford House. This knot of officers—Fleetwood, Desborough, Berry, Sydenham, being the names most known among them—formed a coalition with the republican faction, who despaired of any success in parliament. The dissolution of that assembly was the main article of this league. Alarmed at the notorious caballing of the officers, the commons voted that, during the sitting of the parliament, there should be no general council, or meeting of the officers of the army, without leave of the protector and of both houses. Such a vote could only accelerate their own downfall. Three days afterward the junto of Wallingford House insisted with Richard that he should dissolve parliament; to which, according to the advice of most of his council, and perhaps by an overruling necessity, he gave his consent. This was immediately followed by a declaration of the council of officers, calling back the long parliament, such as it had been expelled in 1653, to those seats which had been filled meanwhile by so many transient successors.

§ 19. It is not in general difficult for an armed force to destroy a government; but something else than the sword is required to create one. It seemed now the policy, as much as duty, of the officers to obey that civil power they had set up; for to rule ostensibly was an impracticable scheme. But the contempt they felt for their pretended masters, and even a sort of necessity arising out of the blindness and passion of that little oligarchy, drove them to a step still more ruinous to their cause than that of deposing Richard, the expulsion once more of that assembly, now worn out and ridiculous in all men's eyes, yet seeming a sort of frail protection against mere anarchy and the terror of the sword. Lambert, the chief actor in this last act of violence, and indeed many of the rest, might plead the right of self-defense. The prevailing faction in the parliament, led by Haslerig, a bold and headstrong man, perceived that, with very inferior pretensions, Lambert was aiming to tread in the steps of Cromwell; and, remembering their neglect of opportunities, as they thought, in permitting the one to overthrow them, fancied that they would anticipate the other. Their intemperate votes cashiering Lambert, Desborough, and other officers, brought on, as every man of more

prudence than Hazlerig must have foreseen, an immediate revolution that crushed once more their boasted commonwealth. They revived again a few months after, not by any exertion of the people, who hated alike both parties, in their behalf, but through the disunion of their real masters, the army, and vented the impotent and injudicious rage of a desperate faction on all who had not gone every length on their side, till scarce any man of eminence was left to muster under the standard of Haslerig and his little knot of associates.

§ 20. In the year 1659 it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious; it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican church, the bacchanalian rant of sectaries, the morose preciseness of puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances (a godly mode of expressing the same thing), or to Haslerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers who, in this utter confusion and abject state of their party, were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation; whether a fixed number should go out or not by rotation; and all those details of political mechanism so important in the eyes of theorists? Every project of this description must have wanted what alone could give it either the pretext of legitimate existence or the chance of permanency, popular consent; the republican party, if we exclude those who would have had a protector, and those fanatics who expected the appearance of Jesus Christ, was incalculably small; not, perhaps, amounting in the whole nation to more than a few hundred persons.

§ 21. The little court of Charles at Brussels watched with

trembling hope those convulsive struggles of their enemies. Though the apparent peaceableness of Richard's government gave them some mortification, they continued to spread their toils through zealous emissaries, and found a very general willingness to restore the ancient constitution under its hereditary sovereign. Besides the cavaliers, who, though numerous and ardent, were impoverished and suspected, the chief presbyterians, lords Fairfax and Willoughby, the earls of Manchester and Denbigh, sir William Waller, sir George Booth, sir Ashley Cooper, Mr. Popham of Somerset, Mr. Howe of Gloucester, sir Horatio Townshend of Norfolk, with more or less of zeal and activity, pledged themselves to the royal cause. Lord Fauconberg, a royalist by family, who had married a daughter of Cromwell, undertook the important office of working on his brothers-in-law, Richard and Henry, whose position, in respect to the army and republican party, was so hazardous. It seems, in fact, that Richard, even during his continuance in power, had not refused to hear the king's agents, and hopes were entertained of him; yet at that time even he could not reasonably be expected to abandon his apparent interests; but soon after his fall, while his influence, or rather that of his father's memory, was still supposed considerable with Montagu, Monk, and Lockhart, they negotiated with him to procure the accession of those persons, and of his brother Henry, for a pension of £20,000 a year and a title. It soon appeared, however, that those prudent veterans of revolution would not embark, under such a pilot, and that Richard was not worth purchasing on the lowest terms. Even Henry Cromwell, with whom a separate treaty had been carried on, and who is said to have determined at one time to proclaim the king at Dublin, from want of courage, or, as is more probable, of seriousness in what must have seemed so unnatural an undertaking, submitted quietly to the vote of parliament that deprived him of the command of Ireland.

§ 22. The conspiracy, if indeed so general a concert for the restoration of ancient laws and liberties ought to have so equivocal an appellation, became ripe in the summer of 1659. The royalists were to appear in arms in different quarters, several principal towns to be seized; but, as the moment drew nigh, the courage of most began to fail. Twenty years of depression and continual failure tamed the spirits of the cavaliers. The shade of Cromwell seemed to hover over and protect the wreck of his greatness. Sir George Booth, almost alone, rose in Cheshire; every other scheme, intended

to be executed simultaneously, failing through the increased prudence of those concerned, or the precautions taken by the government on secret intelligence of the plots; and Booth, thus deserted, made less resistance to Lambert than perhaps was in his power. This discomfiture, of course, dampened the expectations of the king's party. The presbyterians thought themselves ill-used by their new allies, though their own friends had been almost equally cautious. In a less favorable posture of affairs these untoward circumstances might have ruined Charles's hopes; they served, as it was, to make it evident that he must look to some more efficacious aid than a people's good wishes for his restoration.

It was a desirable object for the king to bring over, if possible, some of the leaders of the commonwealth. Except Vane, accordingly, and the decided republicans, there was hardly any man of consequence whom his agents did not attempt to gain, or, at least, from whom they did not entertain hopes. Three stood at this time conspicuous above the rest, not all of them in ability, but in apparent power of serving the royal cause by their defection—Fleetwood, Lambert, and Monk. The first had discovered, as far as his understanding was capable of perceiving any thing, that he had been the dupe of more crafty men in the cabals against Richard Cromwell, whose complete fall from power he had neither designed nor foreseen. In pique and vexation he listened to the overtures of the royalist agents, and sometimes, if we believe their assertions, even promised to declare for the king. But his resolutions were not to be relied upon, nor was his influence likely to prove considerable; though, from his post of lieutenant-general of the army, and long accustomed precedence, he obtained a sort of outward credit far beyond his capacity. Lambert was of a very different stamp; eager, enterprising, ambitious, but destitute of the qualities that inspire respect or confidence. Far from the weak enthusiasm of Fleetwood, he gave offense by displaying less show of religion than the temper of his party required, and still more by a current suspicion that his secret faith was that of the church of Rome, to which the partiality of the catholics toward him gave support. The crafty unfettered ambition of Lambert rendered it not unlikely that, finding his own schemes of sovereignty impracticable, he would make terms with the king; and there were not wanting those who recommended the latter to secure his services by the offer of marrying his daughter, but it does not appear that any actual overtures were made on either side.

§ 23. There remained one man of eminent military reputation, in the command of a considerable insulated army, to whom the royalists anxiously looked with alternate hope and despondency. Monk's early connections were with the king's party, among whom he had been defeated and taken prisoner by Fairfax at Namptwich. Yet even in this period of his life he had not escaped suspicions of disaffection, which he effaced by continuing in prison till the termination of the war in England. He then accepted a commission from the parliament to serve against the Irish, and now, falling entirely into his new line of politics, became strongly attached to Cromwell, by whom he was left in the military government, or rather viceroyalty, of Scotland, which he had reduced to subjection, and kept under with a vigorous hand. Upon Oliver's death he wrote a very sensible letter to Richard Cromwell, containing his advice for the government. He recommends him to obtain the affections of the moderate presbyterian ministers, who have much influence over the people, to summon to his house of lords the wisest and most faithful of the old nobility and some of the leading gentry, to diminish the number of superior officers in the army by throwing every two regiments into one, and to take into his council as his chief advisers Whitelock, St. John, lord Broghill, sir Richard Onslow, Pierpoint, and Thurloe. The judiciousness of this advice is the surest evidence of its sincerity, and must leave no doubt on our minds that Monk was at that time very far from harboring any thoughts of the king's restoration.

But when, through the force of circumstances and the deficiencies in the young protector's capacity, he saw the house of Cromwell forever fallen, it was for Monk to consider what course he should follow, and by what means the nation was to be rescued from the state of anarchy that seemed to menace it. That very different plans must have passed through his mind before he commenced his march from Scotland, it is easy to conjecture; but at what time his determination was finally taken we can not certainly pronounce. At the moment when, with a small but veteran army of 7000 men, he took up his quarters in London, it seemed to be within his arbitrament which way the scale should preponderate. On one side were the wishes of the nation, but restrained by fear; on the other, established possession, maintained by the sword, but rendered precarious by disunion and treachery. It is certainly very possible that, by keeping close to the parliament, Monk might have retarded, at least for a consid-

erable time, the great event which has immortalized him. But it can hardly be said that the king's restoration was rather owing to him than to the general sentiments of the nation, and almost the necessity of circumstances, which had already made every judicious person anticipate the sole termination of our civil discord which they had prepared.

Whatever might have been in the power of Monk by adhering to his declarations of obedience to the parliament, it would have been too late for him, after consenting to the restoration of the secluded members to their seats on February 21, 1660, to withstand the settlement which it seems incredible that he should not at that time have desired. That he continued for at least six weeks afterward in a course of astonishing dissimulation, so as to deceive in a great measure almost all the royalists, who were distrusting his intentions at the very moment when he made his first and most private tender of service to the king through sir John Grenvil about the beginning of April, might at first seem rather to have proceeded from a sort of inability to shake off his inveterate reservedness than from consummate prudence and discretion; for any sudden risings in the king's favor, or an intrigue in the council of state, might easily have brought about the Restoration without his concurrence; and, even as it was, the language held in the house of commons before their dissolution, the votes expunging all that appeared on their journals against the regal government and the house of lords, and, above all, the course of the elections for the new parliament, made it sufficiently evident that the general had delayed his assurances of loyalty till they had lost a part of their value. It is, however, a full explanation of Monk's public conduct that he was not secure of the army, chiefly imbued with fanatical principles, and bearing an inveterate hatred toward the name of Charles Stuart. In the beginning of that month many of the officers, instigated by Haslerig and his friends, had protested to Monk against the proceedings of the house, insisting that they should abjure the king and house of lords. He repressed their mutinous spirit, and bade them obey the parliament, as he should do. Hence he redoubled his protestations of abhorrence of monarchy, and seemed for several weeks, in exterior demonstrations, rather the grand impediment to the king's restoration than the one person who was to have the credit for it. Meanwhile he silently proceeded in displacing the officers whom he could least trust, and disposing the regiments near to the metropolis or at a distance, according to his knowledge of their

tempers; the parliament having given him a commission as lord general of all the forces in the three kingdoms. The delay of Monk in privately assuring the king of his fidelity is still not easy to be explained, but may have proceeded from a want of confidence in Charles's secrecy, or that of his counselors.

§ 24. The months of March and April, 1660, were a period of extreme inquietude, during which every one spoke of the king's restoration as imminent, yet none could distinctly perceive by what means it would be effected, and much less how the difficulties of such a settlement could be overcome. As the moment approached, men turned their attention more to the obstacles and dangers that lay in their way. The restoration of a banished family, concerning whom they knew little, and what they knew not entirely to their satisfaction, with ruined, perhaps revengeful, followers; the returning ascendency of a distressed party, who had sustained losses that could not be repaired without fresh changes of property, injuries that could not be atoned without fresh severities; the conflicting pretensions of two churches—one loath to release its claim, the other to yield its possession; the unsettled dissensions between the crown and parliament, suspended only by civil war and usurpation; all seemed pregnant with such difficulties that prudent men could hardly look forward to the impending revolution without some hesitation and anxiety. The presbyterians, generally speaking, had always been on their guard against an unconditional restoration. They felt much more of hatred to the prevailing power than of attachment to the house of Stuart, and had no disposition to relinquish, either as to church or state government, those principles for which they had fought against Charles I. Hence they began, from the very time that they entered into the coalition (that is, the spring and summer of 1659), to talk of the treaty of Newport as if all that had passed since their vote of the 5th December, 1648, that the king's concessions were a sufficient ground whereon to proceed to the settlement of the kingdom, had been like a hideous dream, from which they had awakened to proceed exactly in their former course. The council of state, appointed on the 23d of February, two days after the return of the secluded members, consisted principally of this party. And there can, I conceive, be no question that, if Monk had continued his neutrality to the last, they would, in conjunction with the new parliament, have sent over propositions for the king's acceptance. Meetings were held of the chief presbyterian lords, Manchester, Northumberland,

Bedford, Say, with Pierpoint (who, finding it too late to prevent the king's return, endeavored to render it as little dangerous as possible), Hollis, Annesley, sir William Waller, Lewis, and other leaders of that party. Monk sometimes attended on these occasions, and always urged the most rigid limitations. His sincerity in this was the less suspected, that his wife, to whom he was notoriously submissive, was entirely presbyterian, though a friend to the king; and his own preference of that sect had always been declared in a more consistent and unequivocal manner than was usual to his dark temper.

These projected limitations, which but a few weeks before Charles would have thankfully accepted, seemed now intolerable; so rapidly do men learn, in the course of prosperous fortune, to scorn what they just before hardly presumed to expect. Those seemed his friends, not who desired to restore him, but who would do so at the least sacrifice of his power and pride. Several of the council, and others in high posts, sent word that they would resist the imposition of unreasonable terms. Monk himself redeemed his ambiguous and dilatory behavior by taking the restoration, as it were, out of the hands of the council, and suggesting the judicious scheme of anticipating their proposals by the king's letter to the two houses of parliament. The elections meantime had taken a course which the faction now in power by no means regarded with satisfaction. The tide ran so strongly for the king's friends, that it was as much as the presbyterians could effect, with the weight of government in their hands, to obtain about an equality of strength with the cavaliers in the convention parliament.

§ 25. It has been a frequent reproach to the conductors of this great revolution, that the king was restored without those terms and limitations which might secure the nation against his abuse of their confidence; so that it has become almost regular to cast on the convention parliament, and more especially on Monk, the imputation of having abandoned public liberty, and brought on, by their inconsiderate loyalty or self-interested treachery, the misgovernment of the last two Stuarts, and the necessity of their ultimate expulsion. But, as this is a very material part of our history, and those who pronounce upon it have not always a very distinct notion either of what was or what could have been done, it may be worth while to consider the matter somewhat more analytically; confining myself, it is to be observed, in the present chapter, to what took place before the

king's personal assumption of the government on the 29th of May, 1660. The subsequent proceedings of the convention parliament fall within another period.

We may remark, in the first place, that the unconditional restoration of Charles II. is sometimes spoken of in too hyperbolical language, as if he had come in as a sort of conqueror, with the laws and liberties of the people at his discretion. Yet he was restored to nothing but the bounded prerogatives of a king of England; bounded by every ancient and modern statute, including those of the long parliament, which had been enacted for the subjects' security. If it be true, as I have elsewhere observed, that the long parliament, in the year 1641, had established, in its most essential parts, our existing constitution, it can hardly be maintained that fresh limitations and additional securities were absolutely indispensable, before the most fundamental of all its principles, the government by king, lords, and commons, could be permitted to take its regular course. Those who so vehemently reprobate the want of conditions at the Restoration would do well to point out what conditions should have been imposed, and what mischiefs they can probably trace from their omission. They should be able also to prove that, in the circumstances of the time, it was quite as feasible and convenient to make certain secure and obligatory provisions the terms of the king's restoration, as seems to be taken for granted.

§ 26. The chief presbyterians appear to have considered the treaty of Newport, if not as fit to be renewed in every article, yet at least as the basis of the compact into which they were to enter with Charles II. But were the concessions wrested in this treaty from his father, in the hour of peril and necessity, fit to become the permanent rules of the English constitution? Turn to the articles prescribed by the long parliament in that negotiation. Not to mention the establishment of a rigorous presbytery in the church, they had insisted on the exclusive command of all forces by land and sea for twenty years, with the sole power of levying and expending the moneys necessary for their support; on the nomination of the principal officers of state and of the judges during the same period; and on the exclusion of the king's adherents from all trust or political power. Admit even that the insincerity and arbitrary principles of Charles I. had rendered necessary such extraordinary precautions, was it to be supposed that the executive power should not revert to his successor? Better it were, beyond

comparison, to maintain the perpetual exclusion of his family than to mock them with such a titular crown, the certain cause of discontent and intrigue, and to mingle premature distrust with their professions of affection.

§ 27. If, however, we were to be convinced that the restoration was effected without a sufficient safeguard against the future abuses of royal power, we must still allow, on looking attentively at the circumstances, that there were very great difficulties in the way of any stipulations for that purpose. It must be evident that any formal treaty between Charles and the English government, as it stood in April, 1660, was inconsistent with their common principle. That government was, by its own declarations, only de facto, only temporary; the return of the secluded members to their seats, and the votes they subsequently passed, held forth to the people that every thing done since the force put on the house in December, 1648, was by an usurpation; the restoration of the ancient monarchy was implied in all recent measures, and was considered as out of all doubt by the whole kingdom. But between a king of England and his subjects no treaty, as such, could be binding; there was no possibility of entering into stipulations with Charles, though in exile, to which a court of justice would pay the slightest attention, except by means of acts of parliament. It was doubtless possible that the council of state might have entered into a secret agreement with him on certain terms, to be incorporated afterward into bills, as at the treaty of Newport. But at that treaty his father, though in prison, was the acknowledged sovereign of England; and it is manifest that the king's recognition must precede the enactment of any law. It is equally obvious that the contracting parties would no longer be the same, and that the conditions that seemed indispensable to the council of state might not meet with the approbation of parliament. It might occur to an impatient people that the former were not invested with legal or permanent authority as could give them any pretext for bargaining with the king, even in behalf of public liberty.

§ 28. It is, I confess, probable that the king would have accepted almost any conditions tendered to him; such at least would have been the advice of most of his counselors; and his own conduct in Scotland was sufficient to show how little any sense of honor or dignity would have stood in his way. But on what grounds did his English friends, nay, some of the presbyterians themselves, advise his submission to the dictates of that party? It was in the expectation

that the next free parliament, summoned by his own writ, would undo all this work of stipulation, and restore him to an unfettered prerogative. And this expectation there was every ground, from the temper of the nation, to entertain. Unless the convention parliament had bargained for its own perpetuity, or the privy council had been made immovable, or a military force independent of the crown had been kept up to overawe the people (all of them most unconstitutional and abominable usurpations), there was no possibility of maintaining the conditions, whatever they might have been, from the want of which so much mischief is fancied to have sprung. Evils did take place, dangers did arise, the liberties of England were once more impaired; but these are far less to be ascribed to the actors in the restoration than to the next parliament, and to the nation who chose it.

§ 29. On the 25th of April the commons met and elected Grimston, a moderate presbyterian, as their speaker. On the same day the doors of the house of lords were found open; and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval.[4] A message was sent down to the commons on April 27, desiring a conference on the great affairs of the kingdom. This was the first time that word had been used for more than eleven years. But the commons, in returning an answer to this message, still employed the word nation. It was determined that the conference should take place on the ensuing Tuesday, the first of May. In this conference there can be no doubt that the question of further securities against the power of the crown would have been discussed. But Monk, whether from conviction of their inexpedience or to atone for his ambiguous delay, had determined to prevent any encroachment on the prerogative. He caused the king's letter to the council of state and to the two houses of parliament to be delivered on that very day. A burst of enthusiastic joy testified their long-repressed wishes; and, when the conference took place the earl of Manchester was instructed to let the commons know that the lords "do own and declare that, according to the ancient and fundamental laws of this kingdom, the government is and ought to be by king, lords, and commons." On the same day the commons resolved to agree in this vote, and appointed a committee to report what pretended acts and ordinances were inconsistent with it.

[4] These were the earls of Manchester, Northumberland, Lincoln, Denbigh, and Suffolk; lords Say, Wharton, Hunsdon, Grey, Maynard.

It is, however, so far from being true that this convention gave itself up to a blind confidence in the king, that their journals during the month of May bear witness to a considerable activity in furthering provisions which the circumstances appeared to require. They appointed a committee on May 3d to consider of the king's letter and declaration, both holding forth, it will be remembered, all promises of indemnity, and every thing that could tranquilize apprehension, and to propose bills accordingly, especially for taking away military tenures. One bill was brought into the house to secure lands purchased from the trustees of the late parliament; another, to establish ministers already settled in benefices; a third, for a general indemnity; a fourth, to take away tenures in chivalry and wardship; a fifth, to make void all grants of honor or estate made by the late or present king since May, 1642. Finally, on the very 29th of May, we find a bill read twice and committed, for the confirmation of privilege of parliament, Magna Charta, the Petition of Right, and other great constitutional statutes. These measures, though some of them were never completed, proved that the restoration was not carried forward with so thoughtless a precipitancy and neglect of liberty as has been asserted.

There was undoubtedly one very important matter of past controversy which they may seem to have avoided—the power over the militia. They silently gave up that momentous question. Yet it was become, in a practical sense, incomparably more important that the representatives of the commons should retain a control over the land forces of the nation than it had been at the commencement of the controversy. War and usurpation had sown the dragon's teeth in our fields; and, instead of the peaceable trained bands of former ages, the citizen soldiers who could not be marched beyond their counties, we had a veteran army accustomed to tread upon the civil authority at the bidding of their superiors, and used alike to govern and obey. It seemed prodigiously dangerous to give up this weapon into the hands of our new sovereign. The experience of other countries as well as our own demonstrated that the public liberty could never be secure if a large standing army should be kept on foot, or any standing army without consent of parliament. But this salutary restriction the convention parliament did not think fit to propose; and in this respect I certainly consider them as having stopped short of adequate security.

§ 30. Of Monk himself it may, I think, be said that, if his conduct in this revolution was not that of a high-minded patriot, it did not deserve all the reproach that has been so frequently thrown on it. No one can, without forfeiting all pretensions to have his own word believed, excuse his incomparable deceit and perjury; a masterpiece, no doubt, as it ought to be reckoned by those who set at naught the obligations of veracity in public transactions, of that wisdom which is not from above. But, in seconding the public wish for the king's restoration, a step which few perhaps can be so much in love with fanatical and tyrannous usurpation as to condemn, he seems to have used what influence he possessed—an influence by no means commanding—to render the new settlement as little injurious as possible to public and private interests. If he frustrated the scheme of throwing the executive authority into the hands of a presbyterian oligarchy, I, for one, can see no great cause for censure; nor is it quite reasonable to expect that a soldier of fortune, inured to the exercise of arbitrary power, and exempt from the prevailing religious fanaticism which must be felt or despised, should have partaken a fervent zeal for liberty, as little congenial to his temperament as it was to his profession. He certainly did not satisfy the king, even in his first promises of support, when he advised an absolute indemnity, and the preservation of actual interests in the lands of the crown and church. In the first debates on the bill of indemnity, when the case of the regicides came into discussion, he pressed for the smallest number of exceptions from pardon; and, though his conduct after the king's return displayed his accustomed prudence, it is evident that, if he had retained great influence in the council, which he assuredly did not, he would have maintained as much as possible of the existing settlement in the church. The deepest stain on his memory is the production of Argyle's private letters on his trial in Scotland; nor, indeed, can Monk be regarded, upon the whole, as an estimable man, though his prudence and success may entitle him, in the common acceptation of the word, to be reckoned a great one.

CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND TO THE FALL OF THE CABAL ADMINISTRATION.

§ 1. Popular Joy at the Restoration. § 2. Proceedings of the Convention Parliament. § 3. Act of Indemnity. Exclusion of the Regicides and others. § 4. Discussions between the Houses on it. Execution of Regicides. § 5. Restitution of Crown and Church Lands. § 6. Discontent of the Royalists. § 7. Settlement of the Revenue. Abolition of Military Tenures. Excise granted instead. § 8. Army disbanded. § 9. Clergy restored to their Benefices. § 10. Hopes of the Presbyterians from the King. § 11. Projects for a Compromise. § 12. King's Declaration in Favor of it. § 13. Convention Parliament dissolved. § 14. Different Complexion of the next. § 15. Condemnation of Vane. Its Injustice. § 16. Acts replacing the Crown in its Prerogatives. § 17. Corporation Act. § 18. Repeal of Triennial Act. Star-Chamber not restored. § 19. Attachment of the Parliament to the Established Church. § 20. Presbyterians deceived by the King. Savoy Conference. § 21. Act of Uniformity. § 22. Ejection of Non-conformist Clergy. § 23. Hopes of the Catholics. Bias of the King toward them. Resisted by Clarendon and the Parliament. § 24. Declaration for Indulgence. Objected to by the Commons. § 25. Act against Conventicles. § 26. Another of the same kind. § 27. Dissatisfaction increases. § 28. Private Life of the King. § 29. Opposition in Parliament. § 30. Appropriation of Supplies. § 31. Commission of Public Accounts. § 32. Decline of Clarendon's Power. Loss of the King's Favor. § 33. Coalition against him. § 34. His Impeachment. Some Articles of it not unfounded. Illegal imprisonments. Sale of Dunkirk. Solicitation of French Money. § 35. His Faults as a Minister. § 36. His pusillanimous Flight and consequent Banishment. § 37. Cabal Ministry. Scheme of Comprehension and Indulgence. § 38. Triple Alliance. § 39. Intrigue with France. King's Desire to be Absolute. § 40. Secret Treaty of 1670. Its Objects. § 41. Differences between Charles and Louis as to the Mode of its Execution. § 42. Fresh Severities against Dissenters. § 43. Dutch War. § 44. Declaration of Indulgence. Opposed by Parliament and withdrawn. § 45. Test Act. § 46. Fall of Shaftesbury and his Colleagues.

§ 1. IT is universally acknowledged that no measure was ever more national, or has ever produced more testimonies of public approbation, than the restoration of Charles II. Nor can this be attributed to the usual fickleness of the multitude. For the late government, whether under the parliament or the protector, had never obtained the sanction of popular consent, nor could have subsisted for a day without the support of the army. The king's return seemed to the people the harbinger of a real liberty, instead of that bastard commonwealth which had insulted them with its name—a liberty secure from enormous assessments, which, even when lawfully imposed, the English had always paid with reluctance, and from the insolent despotism of the soldiery. The young and lively looked forward to a release from the rigors of fanaticism, and were too ready to exchange that hypocritical austerity of the late times for a licentiousness and impiety

that became characteristic of the present. In this tumult of exulting hope and joy there was much to excite anxious forebodings in calmer men; and it was by no means safe to pronounce that a change so generally demanded, and in most respects so expedient, could be effected without very serious sacrifices of public and particular interests.

§ 2. Four subjects of great importance, and some of them very difficult, occupied the convention parliament from the time of the king's return till their dissolution in the following December: a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government; an adjustment of the claims for reparation which the crown, the church, and private royalists had to prefer; a provision for the king's revenue, consistent with the abolition of military tenures; and the settlement of the church. These were in effect the articles of a sort of treaty between the king and the nation, without some legislative provisions as to which, no stable or tranquil course of law could be expected.

§ 3. The king, in his well-known declaration from Breda, dated the 14th of April, had laid down, as it were, certain bases of his restoration, as to some points which he knew to excite much apprehension in England. One of these was a free and general pardon to all his subjects, saving only such as should be excepted by parliament. It had always been the king's expectation, or at least that of his chancellor, that all who had been immediately concerned in his father's death should be delivered up to punishment; and, in the most unpropitious state of his fortunes, while making all professions of pardon and favor to different parties, he had constantly excepted the regicides. Monk, however, had advised, in his first messages to the king, that none, or at most not above four, should be excepted on this account; and the commons voted that not more than seven persons should lose the benefit of the indemnity both as to life and estate. Yet, after having named seven of the late king's judges, they proceeded in a few days to add several more, who had been concerned in managing his trial, or otherwise forward in promoting his death. They went on to pitch upon twenty persons, whom, on account of their deep concern in the transactions of the last twelve years, they determined to affect with penalties not extending to death, and to be determined by some future act of parliament. As their passions grew warmer, and the wishes of the court became better known, they came to except from all benefit of the indemnity such of the king's judges as had not rendered themselves to justice ac-

cording to the late proclamation. In this state the bill of indemnity and oblivion was sent up to the lords. But in that house the old royalists had a more decisive preponderance than among the commons. They voted to except all who had signed the death-warrant against Charles I., or sat when sentence was pronounced, and five others by name, Hacker, Vane, Lambert, Haslerig, and Axtell. They struck out, on the other hand, the clause reserving Lenthall and the rest of the same class for future penalties. They made other alterations in the bill to render it more severe; and with these, after a pretty long delay, and a positive message from the king, requesting them to hasten their proceedings (an irregularity to which they took no exception, and which in the eyes of the nation was justified by the circumstances), they returned the bill to the commons.

§ 4. The vindictive spirit displayed by the upper house was not agreeable to the better temper of the commons, where the presbyterian or moderate party retained great influence. Though the king's judges (such at least as had signed the death-warrant) were equally guilty, it was consonant to the practice of all humane governments to make a selection for capital penalties; and to put forty or fifty persons to death for that offense seemed a very sanguinary course of proceeding, and not likely to promote the conciliation and oblivion so much cried up. But there was a yet stronger objection to this severity. The king had published a proclamation, in a few days after his landing, commanding his father's judges to render themselves up within fourteen days, on pain of being excepted from any pardon or indemnity, either as to their lives or estates. Many had voluntarily come in, having put an obvious construction on this proclamation. It seems to admit of little question that the king's faith was pledged to those persons, and that no advantage could be taken of any ambiguity in the proclamation, without as real perfidiousness as if the words had been more express. They were at least entitled to be set at liberty, and to have a reasonable time allowed for making their escape, if it were determined to exclude them from the indemnity. The commons were more mindful of the king's honor and their own than his nearest advisers. But the violent royalists were gaining ground among them, and it ended in a compromise. They left Hacker and Axtell, who had been prominently concerned in the king's death, to their fate. They even admitted the exceptions of Vane and Lambert, contenting themselves with a joint address of both houses to

the king, that, if they should be attainted, execution as to their lives might be remitted. Haslerig was saved on a division of 141 to 116, partly through the intercession of Monk, who had pledged his word to him. Most of the king's judges were entirely excepted; but with a proviso in favor of such as had surrendered according to the proclamation, that the sentence should not be executed without a special act of parliament. Others were reserved for penalties not extending to life, to be inflicted by a future act. About twenty enumerated persons, as well as those who had pronounced sentence of death in any of the late illegal high courts of justice, were rendered incapable of any civil or military office. Thus, after three months' delay, which had given room to distrust the boasted clemency and forgiveness of the victorious royalists, the act of indemnity was finally passed. Ten persons suffered death soon afterward for the murder of Charles I.; and three more who had been seized in Holland, after a considerable lapse of time. There can be no reasonable ground for censuring either the king or the parliament for their punishment, except that Hugh Peters, though a very odious fanatic, was not so directly implicated in the king's death as many who escaped, and the execution of Scrope, who had surrendered under the proclamation, was an inexcusable breach of faith.

§ 5. A question apparently far more difficult was that of restitution and redress. The crown-lands, those of the church, the estates in certain instances of eminent royalists, had been sold by the authority of the late usurpers, and that not at very low rates, considering the precariousness of the title. This naturally seemed a material obstacle to the restoration of ancient rights, especially in the case of ecclesiastical corporations, whom men are commonly less disposed to favor than private persons. The clergy themselves had never expected that their estates would revert to them in full propriety, and would probably have been contented, at the moment of the king's return, to grant easy leases to the purchasers. Nor were the house of commons, many of whom were interested in these sales, inclined to let in the former owners without conditions. A bill was accordingly brought into the house at the beginning of the session to confirm sales, or to give indemnity to the purchasers. I do not find its provisions more particularly stated. The zeal of the royalists soon caused the crown-lands to be excepted. But the house adhered to the principle of composition as to ecclesiastical property, and kept the bill a long time in debate. At the

adjournment in September the chancellor told them his majesty had thought much upon the business, and done much for the accommodation of many particular persons, and doubted not but that, before they met again, a good progress would be made, so that the persons concerned would be much to blame if they received not full satisfaction, promising also to advise with some of the commons as to that settlement. These expressions indicate a design to take the matter out of the hands of parliament. For it was Hyde's firm resolution to replace the church in the whole of its property, without any other regard to the actual possessors than the right owners should severally think it equitable to display. And this, as may be supposed, proved very small. No further steps were taken on the meeting of parliament after the adjournment; and by the dissolution the parties were left to the common course of law. The church, the crown, the dispossessed royalists, re-entered triumphantly on their lands: there were no means of repelling the owners' claim, nor any satisfaction to be looked for by the purchasers under so defective a title. It must be owned that the facility with which this was accomplished is a striking testimony to the strength of the new government and the concurrence of the nation. This is the more remarkable, if it be true, as Ludlow informs us, that the chapter lands had been sold by the trustees appointed by parliament at the clear income of fifteen or seventeen years' purchase.

§ 6. The great body, however, of the suffering cavaliers, who had compounded for their delinquency under the ordinances of the long parliament, or whose estates had been for a time in sequestration, found no remedy for these losses by any process of law. The act of indemnity put a stop to any suits they might have instituted against any persons concerned in carrying these illegal ordinances into execution. They were compelled to put up with their poverty, having the additional mortification of seeing one class, namely, the clergy, who had been engaged in the same cause, not alike in their fortune, and many even of the vanquished republicans undisturbed in wealth which, directly or indirectly, they deemed acquired at their own expense. They called the statute an act of indemnity for the king's enemies, and of oblivion for his friends. They murmured at the ingratitude of Charles, as if he were bound to forfeit his honor and risk his throne for their sakes. They conceived a deep hatred of Clarendon, whose steady adherence to the great principles of the act of indemnity is the most honorable act

of his public life. And the discontent engendered by their disappointed hopes led to some part of the opposition afterward experienced by the king, and still more certainly to the coalition against the minister.

§ 7. No one cause had so eminently contributed to the dissensions between the crown and parliament, in the two last reigns, as the disproportion between the public revenues under a rapidly-increasing depreciation in the value of money, and the exigencies, at least on some occasions, of the administration. There could be no apology for the parsimonious reluctance of the commons to grant supplies, except the constitutional necessity of rendering them the condition of redress of grievances; and in the present circumstances, satisfied, as they seemed at least to be, with the securities they had obtained, and enamored of their new sovereign, it was reasonable to make some further provision for the current expenditure. Yet this was to be meted out with such prudence as not to place him beyond the necessity of frequent recurrence to their aid. A committee was accordingly appointed "to consider of settling such a revenue on his majesty as may maintain the splendor and grandeur of his kingly office, and preserve the crown from want and from being undervalued by his neighbors." By their report it appeared that the revenue of Charles I. from 1637 to 1641 had amounted on an average to about £900,000, of which full £200,000 arose from sources either not warranted by law or no longer available. The house resolved to raise the present king's income to £1,200,000 per annum, a sum perhaps sufficient in those times for the ordinary charges of government. But the funds assigned to produce his revenue soon fell short of the parliament's calculation.

One ancient fountain that had poured its stream into the royal treasury it was now determined to close up forever. The feudal tenures had brought with them at the Conquest, or not long after, those incidents, as they were usually called, or emoluments of seigniory, which remained after the military character of fiefs had been nearly effaced, especially the right of detaining the estates of minors holding in chivalry without accounting for the profits. This galling burden, incomparably more ruinous to the tenant than beneficial to the lord, it had long been determined to remove. Charles, at the treaty of Newport, had consented to give it up for a fixed revenue of £100,000; and this was almost the only part of that ineffectual compact which the present parliament were anxious to complete. The king, though likely to

lose much patronage and influence, and what passed with lawyers for a high attribute of his prerogative, could not decently refuse a commutation so evidently advantageous to the aristocracy. No great difference of opinion subsisting as to the expediency of taking away military tenures, it remained only to decide from what resources the commutation revenue should spring. Two schemes were suggested; the one, a permanent tax on lands held in chivalry (which, as distinguished from those in soccage, were alone liable to the feudal burdens); the other, an excise on beer and some other liquors. It is evident that the former was founded on a just principle, while the latter transferred a particular burden to the community. But the self-interest which so unhappily predominates even in representative assemblies, with the aid of the courtiers, who knew that an excise increasing with the riches of the country was far more desirable for the crown than a fixed land-tax, caused the former to be carried, though by the very small majority of two voices. The statute 12 Car. II., c. 24, takes away the court of wards, with all wardships and forfeitures for marriage by reason of tenure, all primer seizins and fines for alienation, aids, escuages, homages, and tenures by chivalry without exception, save the honorary services of grand sergeanty; converting all such tenures into common soccage. The same statute abolishes those famous rights of purveyance and pre-emption, the fruitful theme of so many complaining parliaments; and this relief of the people from a general burden may serve in some measure as an apology for the imposition of the excise. This act may be said to have wrought an important change in the spirit of our constitution, by reducing what is emphatically called the prerogative of the crown, and which, by its practical exhibition in these two vexatious exercises of power, wardship and purveyance, kept up in the minds of the people a more distinct perception, as well as more awe, of the monarchy, than could be felt in later periods, when it has become, as it were, merged in the common course of law, and blended with the very complex mechanism of our institutions. This great innovation, however, is properly to be referred to the revolution of 1641, which put an end to the court of star-chamber, and suspended the feudal superiorities. Hence, with all the misconduct of the last two Stuarts, and all the tendency toward arbitrary power that their government often displayed, we must perceive that the constitution had put on, in a very great degree, its modern character during that period; the boundaries of prerogative were

better understood; its pretensions, at least in public, were less enormous; and not so many violent and oppressive, certainly not so many illegal, acts were committed toward individuals as under the first two of their family.

§ 8. In fixing upon £1,200,000 as a competent revenue for the crown, the commons tacitly gave it to be understood that a regular military force was not among the necessities for which they meant to provide. They looked upon the army, notwithstanding its recent services, with that apprehension and jealousy which became an English house of commons. They were still supporting it by monthly assessments of £70,000, and could gain no relief by the king's restoration till that charge came to an end. A bill, therefore, was sent up to the lords before their adjournment in September, providing money for disbanding the land forces. This was done during the recess: the soldiers received their arrears with many fair words of praise, and the nation saw itself, with delight and thankfulness to the king, released from its heavy burdens and the dread of servitude. Yet Charles had too much knowledge of foreign countries, where monarchy flourished in all its plenitude of sovereign power under the guardian sword of a standing army, to part readily with so favorite an instrument of kings. Some of his councilors, and especially the duke of York, dissuaded him from disbanding the army, or at least advised his supplying its place by another. The unsettled state of the kingdom after so momentous a revolution, the dangerous audacity of the fanatical party, whose enterprises were the more to be guarded against because they were founded on no such calculation as reasonable men would form, and of which the insurrection of Venner in November, 1660, furnished an example, did undoubtedly appear a very plausible excuse for something more of a military protection to the government than yeomen of the guard and gentlemen pensioners. General Monk's regiment, called the Coldstream, and one other of horse, were accordingly retained by the king in his service; another was formed out of troops brought from Dunkirk; and thus began, under the name of guards, the present regular army of Great Britain. In 1662 these amounted to about 5000 men; a petty force according to our present notions, or to the practice of other European monarchies in that age, yet sufficient to establish an alarming precedent, and to open a new source of contention between the supporters of power and those of freedom.

So little essential innovation had been effected by twenty

years' interruption of the regular government in the common law or course of judicial proceedings, that, when the king and house of lords were restored to their places, little more seemed to be requisite than a change of names. But what was true of the state could not be applied to the church. The revolution there had gone much farther, and the questions of restoration and compromise were far more difficult.

§ 9. It will be remembered that such of the clergy as steadily adhered to the episcopal constitution had been expelled from their benefices by the long parliament under various pretexts, and chiefly for refusing to take the covenant. The new establishment was nominally presbyterian. But the presbyterian discipline and synodical government were very partially introduced; and, upon the whole, the church, during the suspension of the ancient laws, was rather an assemblage of congregations than a compact body, having little more unity than resulted from their common dependency on the temporal magistrate. In the time of Cromwell, who favored the independent sectaries, some of that denomination obtained livings; but very few, I believe, comparatively, who had not received either episcopal or presbyterian ordination. The right of private patronage to benefices, and that of tithes, though continually menaced by the more violent party, subsisted without alteration. Meanwhile the episcopal ministers, though excluded from legal toleration along with papists, by the instrument of government under which Cromwell professed to hold his power, obtained, in general, a sufficient indulgence for the exercise of their function. Once, indeed, on discovery of the royalist conspiracy in 1655, he published a severe ordinance, forbidding every ejected minister or fellow of a college to act as domestic chaplain or school-master. But this was coupled with a promise to show as much tenderness as might consist with the safety of the nation toward such of the said persons as should give testimony of their good affection to the government; and, in point of fact, this ordinance was so far from being rigorously observed, that episcopalian conventicles were openly kept in London. Cromwell was of a really tolerant disposition, and there had perhaps, on the whole, been no period of equal duration wherein the catholics themselves suffered so little molestation as under the protectorate. It is well known that he permitted the settlement of Jews in England, after an exclusion of nearly three centuries, in spite of the denunciations of some bigoted churchmen and lawyers.

§ 10. The presbyterian clergy, though co-operating in the king's restoration, experienced very just apprehensions of the church they had supplanted; and this was in fact one great motive of the restrictions that party was so anxious to impose on him. His character and sentiments were yet very imperfectly known in England; and much pains were taken on both sides, by short pamphlets, panegyrical or defamatory, to represent him as the best Englishman and best protestant of the age, or as one given up to profligacy and popery. The caricature likeness was, we must now acknowledge, more true than the other; but at that time it was fair and natural to dwell on the more pleasing picture. The presbyterians remembered that he was what they called a covenanted king; that is, that, for the sake of the assistance of the Scots, he had submitted to all the obligations, and taken all the oaths, they thought fit to impose. But it was well known that, on the failure of those prospects, he had returned to the church of England, and that he was surrounded by its zealous adherents. Charles, in his declaration from Breda, promised to grant liberty of conscience, so that no man should be disquieted or called in question for differences of opinion in matters of religion which do not disturb the peace of the kingdom, and to consent to such acts of parliament as should be offered to him for confirming that indulgence. But he was silent as to the church establishment; and the presbyterian ministers, who went over to present the congratulations of their body, met with civil language, but no sort of encouragement to expect any personal compliance on the king's part with their mode of worship.

§ 11. The moderate party in the convention parliament, though not absolutely of the presbyterian interest, saw the danger of permitting an oppressed body of churchmen to regain their superiority without some restraint. The actual incumbents of benefices were, on the whole, a respectable and even exemplary class, most of whom could not be reckoned answerable for the legal defects of their title. But the ejected ministers of the Anglican church, who had endured for their attachment to its discipline and to the crown so many years of poverty and privation, stood in a still more favorable light, and had an evident claim to restoration. The commons accordingly, before the king's return, prepared a bill for confirming and restoring ministers with the twofold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy who by ejection or forced surrender had made way for intruders,

and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies. This act did not pass without opposition from the cavaliers, who panted to retaliate the persecution that had afflicted their church.

This legal security, however, for the enjoyment of their livings gave no satisfaction to the scruples of conscientious men. The episcopal discipline, the Anglican liturgy and ceremonies, having never been abrogated by law, revived of course with the constitutional monarchy; and brought with them all the penalties that the act of uniformity and other statutes had inflicted. The non-conforming clergy threw themselves on the king's compassion, or gratitude, or policy, for relief. The independents, too irreconcilable to the established church for any scheme of comprehension, looked only to that liberty of conscience which the king's declaration from Breda had held forth. But the presbyterians soothed themselves with hopes of retaining their benefices by some compromise with their adversaries. They had never, generally speaking, embraced the rigid principles of the Scottish clergy, and were willing to admit what they called a moderate episcopacy. They offered, accordingly, on the king's request to know their terms, a middle scheme, usually denominated Bishop Usher's Model; not as altogether approving it, but because they could not hope for any thing nearer to their own views. This consisted, first, in the appointment of a suffragan bishop for each rural deanery, holding a monthly synod of the presbyters within his district; and, secondly, in an annual diocesan synod of suffragans and representatives of the presbyters, under the presidency of the bishop, and deciding upon all matters before them by plurality of suffrages. But, though such a system was inconsistent with that parity which the rigid presbyterians maintained to be indispensable, and those who espoused it are reckoned, in a theological division, among episcopalians, it was in the eyes of equally rigid churchmen little better than a disguised presbytery, and a real subversion of the Anglican hierarchy.

The presbyterian ministers, or rather a few eminent persons of that class, proceeded to solicit a revision of the liturgy, and a consideration of the numerous objections which they made to certain passages, while they admitted the lawfulness of a prescribed form. They implored the king also to abolish, or at least not to enjoin as necessary, some of those ceremonies which they scrupled to use, and which, in

fact, had been the original cause of their schism; the surplice, the cross in baptism, the practice of kneeling at the communion, and one or two more. A tone of humble supplication pervades all their language, which some might invidiously contrast with their unbending haughtiness in prosperity. The bishops and other Anglican divines, to whom their propositions were referred, met the offer of capitulation with a scornful and vindictive smile. They held out not the least overture toward a compromise.

§ 12. The king, however, deemed it expedient, during the continuance of a parliament, the majority of whom were desirous of union in the church, and had given some indications of their disposition, to keep up the delusion a little longer, and prevent the possible consequences of despair. He had already appointed several presbyterian ministers his chaplains, and given them frequent audiences. But during the recess of parliament he published a declaration, wherein, after some compliments to the ministers of the presbyterian opinion and an artful expression of satisfaction that he had found them no enemies to episcopacy or a liturgy, as they had been reported to be, he announces his intention to appoint a sufficient number of suffragan bishops in the larger dioceses; he promises that no bishop should ordain or exercise any part of his spiritual jurisdiction without advice and assistance of his presbyters; that no chancellors or officials of the bishops should use any jurisdiction over the ministry, nor any archdeacon without the advice of a council of his clergy; that the dean and chapter of the diocese, together with an equal number of presbyters, annually chosen by the clergy, should be always advising and assisting at all ordinations, church censures, and other important acts of spiritual jurisdiction. He declared also that he would appoint an equal number of divines of both persuasions to revise the liturgy; desiring that in the mean time none would wholly lay it aside, yet promising that no one should be molested for not using it till it should be reviewed and reformed. With regard to ceremonies, he declared that none should be compelled to receive the sacrament kneeling, nor to use the cross in baptism, nor to bow at the name of Jesus, nor to wear the surplice except in the royal chapel and in cathedrals, nor should subscription to articles not doctrinal be required. He renewed also his declaration from Breda, that no man should be called in question for differences of religious opinion not disturbing the peace of the kingdom.

Though many of the presbyterian party deemed this mod-

ification of Anglican episcopacy a departure from their notions of an apostolic church, and inconsistent with their covenant, the majority would doubtless have acquiesced in so extensive a concession from the ruling power. If faithfully executed according to its apparent meaning, it does not seem that the declaration falls very short of their own proposal, the scheme of Usher. The high-churchmen, indeed, would have murmured had it been made effectual. But such as were nearest the king's councils well knew that nothing else was intended by it than to scatter dust in men's eyes, and to prevent the interference of parliament. This was soon rendered manifest, when a bill to render the king's declaration effectual was vigorously opposed by the courtiers, and rejected on a second reading by 183 to 157. Nothing could more forcibly demonstrate an intention of breaking faith with the presbyterians than this vote. For the king's declaration was repugnant to the act of uniformity and many other statutes, so that it could not be carried into effect without the authority of parliament, unless by means of such a general dispensing power as no parliament would endure. And it is impossible to question that a bill for confirming it would have easily passed through this house of commons had it not been for the resistance of the government.

§ 13. Charles now dissolved the convention parliament, having obtained from it what was immediately necessary, but well aware that he could better accomplish his objects with another. It was studiously inculcated by the royalist lawyers, that, as this assembly had not been summoned by the king's writ, none of its acts could have any real validity, except by the confirmation of a true parliament. This doctrine, being applicable to the act of indemnity, left the kingdom in a precarious condition till an undeniable security could be obtained, and rendered the dissolution almost necessary. Another parliament was called, of very different composition from the last. Possession and the standing ordinances against royalists had enabled the secluded members of 1648—that is, the adherents of the long parliament—to stem with some degree of success the impetuous tide of loyalty in the last elections, and put them almost upon an equality with the court. But in the new assembly cavaliers and the sons of cavaliers entirely predominated; the great families, the ancient gentry, the episcopal clergy, resumed their influence; the presbyterians and sectarians feared to have their offenses remembered; so that we may rather be surprised that about fifty or sixty who had belonged to the

opposite side found places in such a parliament, than that its general complexion should be decidedly royalist. The presbyterian faction seemed to lie prostrate at the feet of those over whom they had so long triumphed, without any force of arms or civil convulsion, as if the king had been brought in against their will. Nor did the cavaliers fail to treat them as enemies to monarchy, though it was notorious that the restoration was chiefly owing to their endeavors.

§ 14. The new parliament gave the first proofs of their disposition by voting that all their members should receive the sacrament on a certain day according to the rites of the church of England, and that the solemn league and covenant should be burned by the common hangman. They excited still more serious alarm by an evident reluctance to confirm the late act of indemnity, which the king at the opening of the session had pressed upon their attention. Those who had suffered the sequestrations and other losses of a vanquished party could not endure to abandon what they reckoned a just reparation. But Clarendon adhered with equal integrity and prudence to this fundamental principle of the Restoration; and, after a strong message from the king on the subject, the commons were content to let the bill pass with no new exceptions. They gave, indeed, some relief to the ruined cavaliers by voting £60,000 to be distributed among that class; but so inadequate a compensation did not assuage their discontents.

§ 15. It has been mentioned above that the late house of commons had consented to the exception of Vane and Lambert from indemnity on the king's promise that they should not suffer death. They had lain in the tower accordingly, without being brought to trial. The regicides who had come in under the proclamation were saved from capital punishment by the former act of indemnity. But the present parliament abhorred this lukewarm lenity. A bill was brought in for the execution of the king's judges in the Tower; and the attorney-general was requested to proceed against Vane and Lambert. The former was dropped in the house of lords; but those formidable chiefs of the commonwealth were brought to trial. Their indictments alleged as overt acts of high treason against Charles II., their exercise of civil and military functions under the usurping government; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person. Under such an accusation many who had been the most earnest in the king's restoration might have stood at the bar.

The condemnation of sir Henry Vane was very questionable, even according to the letter of the law. It was plainly repugnant to its spirit. An excellent statute enacted under Henry VII., assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered when another claimant should gain possession of the throne. It established the duty of allegiance to the existing government upon a general principle; but in its terms it certainly presumed that government to be a monarchy. This furnished the judges upon the trial of Vane with a distinction, of which they willingly availed themselves. They proceeded, however, beyond all bounds of constitutional precedents and of common sense when they determined that Charles II. had been king de facto as well as de jure from the moment of his father's death, though, in the words of their senseless sophistry, "kept out of the exercise of his royal authority by traitors and rebels." We may consider, therefore, the execution of Vane as one of the most reprehensible actions of this bad reign. It not only violated the assurance of indemnity, but introduced a principle of sanguinary proscription, which would render the return of what is called legitimate government, under any circumstances, an intolerable curse to a nation.

The king violated his promise by the execution of Vane, as much as the judges strained the law by his conviction. He had assured the last parliament, in answer to their address, that, if Vane and Lambert should be attainted by law, he would not suffer the sentence to be executed. We have on record a remarkable letter of the king to his minister, wherein he expresses his resentment at Vane's bold demeanor during his trial, and intimates a wish for his death, though with some doubts whether it could be honorably done. Doubts of such a nature never lasted long with this prince; and Vane suffered the week after. Lambert, whose submissive behavior had furnished a contrast with that of Vane, was sent to Guernsey, and remained a prisoner for thirty years.

§ 16. No time was lost, as might be expected from the temper of the commons, in replacing the throne on its constitutional basis after the rude encroachments of the long parliament. They declared that there was no legislative power in either or both houses without the king; that the league and covenant was unlawfully imposed; that the sole supreme command of the militia, and of all forces by sea and land, had ever been by the laws of England the undoubted

right of the crown; that neither house of parliament could pretend to it, nor could lawfully levy any war, offensive or defensive, against his majesty. These last words appeared to go to a dangerous length, and to sanction the suicidal doctrine of absolute non-resistance. They made the law of high treason more strict during the king's life, in pursuance of a precedent in the reign of Elizabeth. They restored the bishops to their seats in the house of lords; a step which the last parliament would never have been induced to take, but which met with little opposition from the present. The remembrance of those tumultuous assemblages which had overawed their predecessors in the winter of 1641, and at other times, produced a law against disorderly petitions. This statute provides that no petition or address shall be presented to the king or either house of parliament by more than ten persons; nor shall any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury.

§ 17. Thus far the new parliament might be said to have acted chiefly on a principle of repairing the breaches recently made in our constitution, and of re-establishing the just boundaries of the executive power; nor would much objection have been offered to their measures, had they gone no farther in the same course. The act for regulating corporations is much more questionable, and displayed a determination to exclude a considerable portion of the community from their civil rights. It enjoined all magistrates and persons bearing offices of trust in corporations to swear that they believed it unlawful, on any pretense whatever, to take arms against the king, and that they abhorred the traitorous position of bearing arms by his authority against his person, or against those that are commissioned by him. They were also to renounce all obligation arising out of the oath called the solemn league and covenant; in case of refusal, to be immediately removed from office. Those elected in future were, in addition to the same oaths, to have received the sacrament within one year before their election according to the rites of the English church. These provisions struck at the heart of the presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to parliament a very large proportion of its members. Yet it rarely happens that a political faction is crushed by the terrors of an oath. Many of the more rigid

presbyterians refused the conditions imposed by this act; but the majority found pretexts for qualifying themselves.

§ 18. It could not yet be said that this loyal assembly had meddled with those safeguards of public liberty which had been erected by their great predecessors in 1641. The laws that Falkland and Hampden had combined to provide, those bulwarks against the ancient exorbitance of prerogative, stood unscathed; threatened from afar, but not yet betrayed by the garrison. But one of these, the bill for triennial parliaments, wounded the pride of royalty, and gave scandal to its worshipers; not so much on account of its object, as of the securities provided against its violation. Bills were accordingly more than once ordered to be brought in for repealing the triennial act; but no further steps were taken till the king thought it at length necessary, in the year 1664, to give them an intimation of his desires. The commons were sufficiently compliant to pass a bill for the repeal of that which had been enacted with unanimous consent in 1641. The preamble recites the said act to have been "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of parliaments." The bill then repeals and annuls every clause and article in the fullest manner; yet, with an inconsistency not unusual in our statutes, adds a provision that parliaments shall not in future be intermitted for above three years at the most. This clause is evidently framed in a different spirit from the original bill, and may be attributed to the influence of that party in the house which had begun to oppose the court, and already showed itself in considerable strength. Thus the effect of this compromise was, that the law of the long parliament subsisted as to its principle, without those unusual clauses which had been enacted to render its observance secure. The king assured them, in giving his assent to the repeal, that he would not be a day more without a parliament on that account. Some parties were anxious to restore the two great levers of prerogative, the courts of star-chamber and high commission; but it may be questionable whether, even amidst the fervid loyalty of 1661, the house of commons would have concurred in re-establishing the star-chamber. They had taken marked precautions in passing an act for the restoration of ecclesiastical jurisdiction, that it should not be construed to restore the high-commission court, or to give validity to the canons of 1640, or to enlarge in any manner the ancient authority of the church. A tribunal still more formidable and obnoxious

would hardly have found favor with a body of men who, as their behavior shortly demonstrated, might rather be taxed with passion and vindictiveness toward a hostile faction, than a deliberate willingness to abandon their English rights and privileges.

§ 19. The striking characteristic of this parliament was a zealous and intolerant attachment to the established church, not losing an atom of their aversion to popery in their abhorrence of protestant dissent. In every former parliament since the Reformation, the country party (if I may use such a word, by anticipation, for those gentlemen of landed estates who owed their seats to their provincial importance, as distinguished from courtiers, lawyers, and dependents on the nobility), had incurred with rigid churchmen the reproach of puritanical affections. They were implacable against popery, but disposed to far more indulgence with respect to non-conformity than the very different maxims of Elizabeth and her successors would permit. Yet it is obvious that the puritan commons of James I. and the high-church commons of Charles II. were composed, in a great measure, of the same families, and entirely of the same classes. But, as the arrogance of the prelates had excited indignation, and the sufferings of the scrupulous clergy begotten sympathy in one age, so the reversed scenes of the last twenty years had given to the former, or their adherents, the advantage of enduring oppression with humility and fortitude, and displayed in the latter, or at least many of their number, those odious and malevolent qualities which adversity had either concealed or rendered less dangerous. The gentry, connected for the most part by birth or education with the episcopal clergy, could not for an instant hesitate between the ancient establishment and one composed of men whose eloquence in preaching was chiefly directed toward the common people, and presupposed a degree of enthusiasm in the hearer which the higher classes rarely possessed. They dreaded the wilder sectaries, foes to property, or at least to its political influence, as much as to the regal constitution; and not unnaturally, though without perfect fairness, confounded the presbyterian or moderate non-conformist in the motley crowd of fanatics, to many of whose tenets he at least more approximated than the church of England minister.

§ 20. There is every reason to presume, as I have already remarked, that the king had no intention but to deceive the presbyterians and their friends in the convention parliament by his declaration of October, 1660. He proceeded, after the

dissolution of that assembly, to fill up the number of bishops, who had been reduced to nine, but with no further mention of suffragans, or of the council of presbyters, which had been announced in that declaration. It would have been, however, too flagrant a breach of promise if some show had not been made of desiring a reconciliation on the subordinate details of religious ceremonies and the liturgy. This produced a conference held at the Savoy, in May, 1661, between twenty-one Anglican and as many presbyterian divines: the latter were called upon to propose their objections; it being the part of the others to defend. They brought forward so long a list as seemed to raise little hope of agreement. Some of these objections to the service, as may be imagined, were rather captious and hypercritical; yet in many cases they pointed out real defects. As to ceremonies, they dwelt on the same scruples as had from the beginning of Elizabeth's reign produced so unhappy a discordance, and had become inveterate by so much persecution. The conference was managed with great mutual bitterness and recrimination; the one party stimulated by vindictive hatred and the natural arrogance of power; the other irritated by the manifest design of breaking the king's faith, and probably by a sense of their own improvidence in ruining themselves by his restoration. The chief blame, it can not be dissembled, ought to fall on the churchmen. An opportunity was afforded of healing, in a very great measure, that schism and separation which, if they are to be believed, is one of the worst evils that can befall a Christian community. They had it in their power to retain, or to expel, a vast number of worthy and laborious ministers of the gospel, with whom they had, in their own estimation, no essential ground of difference. The Savoy conference broke up in anger, each party more exasperated and more irreconcilable than before. This, indeed, has been the usual consequence of attempts to bring men to an understanding on religious differences by explanation or compromise.

§ 21. A determination having been taken to admit of no extensive comprehension, it was debated by the government whether to make a few alterations in the liturgy, or to restore the ancient service in every particular. The former advice prevailed, though with no desire or expectation of conciliating any scrupulous persons by the amendments introduced. These were by no means numerous, and in some instances rather chosen in order to irritate and mock the opposite party than from any compliance with their prejudices.

It is, indeed, very probable, from the temper of the new parliament, that they would not have come into more tolerant and healing measures. When the act of uniformity was brought into the house of lords, it was found not only to restore all the ceremonies and other matters to which objection had been taken, but to contain fresh clauses more intolerable than the rest to the presbyterian clergy. One of these enacted that not only every beneficed minister, but fellow of a college, or even school-master, should declare his unfeigned assent and consent to all and every thing contained in the book of common prayer. These words, however capable of being eluded and explained away, as such subscriptions always are, seemed to amount, in common use of language, to a complete approbation of an entire volume, such as a man of sense hardly gives to any book, and which, at a time when scrupulous persons were with great difficulty endeavoring to reconcile themselves to submission, placed a new stumbling-block in their way, which, without abandoning their integrity, they found it impossible to surmount.

The temper of those who chiefly managed church affairs at this period displayed itself in another innovation tending to the same end. It had been not unusual from the very beginnings of our Reformation to admit ministers ordained in foreign protestant churches to benefices in England. No re-ordination had ever been practiced with respect to those who had received the imposition of hands in a regular church; and hence it appears that the church of England, whatever tenets might latterly have been broached in controversy, did not consider the ordination of presbyters invalid. Though such ordinations as had taken place during the late troubles, and by virtue of which a great part of the actual clergy were in possession, were evidently irregular, on the supposition that the English episcopal church was then in existence; yet, if the argument from such great convenience as men call necessity was to prevail, it was surely worth while to suffer them to pass without question for the present, enacting provisions, if such were required, for the future. But this did not fall in with the passion and policy of the bishops, who found a pretext for their worldly motives of action in the supposed divine right and necessity of episcopal succession. It was therefore enacted in the statute for uniformity that no person should hold any preferment in England without having received episcopal ordination.

§ 22. The new act of uniformity succeeded to the utmost wishes of its promoters. It provided that every minister

should, before the feast of St. Bartholomew, 1662, publicly declare his assent and consent to every thing contained in the book of common prayer, on pain of being ipso facto deprived of his benefice. Though even the long parliament had reserved a fifth of the profits to those who were rejected for refusing the covenant, no mercy could be obtained from the still greater bigotry of the present. When the day of St. Bartholomew came, about 2000 persons resigned their preferments rather than stain their consciences by compliance—an act to which the more liberal Anglicans, after the bitterness of immediate passions had passed away, have accorded that praise which is due to heroic virtue in an enemy. It may justly be said that the episcopal clergy had set an example of similar magnanimity in refusing to take the covenant. Both of them afford striking contrasts to the pliancy of the English church in the greater question of the preceding century, and bear witness to a remarkable integrity and consistency of principle.

No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his declarations, both that from Breda and that which he published in October, 1660. It is idle to say that those declarations were subject to the decision of parliament, as if the crown had no sort of influence in that assembly, nor even any means of making its inclinations known. He had urged them to confirm the act of indemnity, wherein he thought his honor and security concerned: was it less easy to obtain, or at least to ask for, their concurrence in a comprehension or toleration of the presbyterian clergy? Yet, after mocking those persons with pretended favor, and even offering bishoprics to some of their number by way of purchasing their defection, the king made no effort to mitigate the provisions of the act of uniformity; and Clarendon strenuously supported them through both houses of parliament. This behavior in the minister sprang from real bigotry and dislike of the presbyterians; but Charles was influenced by a very different motive, which had become the secret spring of all his policy. This requires to be fully explained.

§ 23. Charles, during his misfortunes, had made repeated promises to the pope and the great catholic princes of relaxing the penal laws against his subjects of that religion—promises which he well knew to be the necessary condition of their assistance. And, though he never received any succor which could demand the performance of these assurances, his desire to stand well with France and Spain, as well as a

sense of what was really due to the English catholics, would have disposed him to grant every indulgence which the temper of his people should permit. The laws were highly severe, in some cases sanguinary; they were enacted in very different times, from plausible motives of distrust, which it would be now both absurd and ungrateful to retain. The catholics had been the most strenuous of the late king's adherents, the greatest sufferers for their loyalty. There can be no sort of doubt that the king's natural facility, and exemption from all prejudice in favor of established laws, would have led him to afford every indulgence that could be demanded to his catholic subjects, many of whom were his companions or his counselors, without any propensity toward their religion. But it is morally certain that during the period of his banishment he had imbibed, as deeply and seriously as the character of his mind would permit, a persuasion that, if any scheme of Christianity were true, it could only be found in the bosom of an infallible church; though he was never reconciled, according to the formal profession which she exacts, till the last hours of his life. The secret, however, of his inclinations, though disguised to the world by the appearance, and probably sometimes more than the appearance, of carelessness and infidelity, could not be wholly concealed from his court. Nor are there wanting proofs that the protestantism of both the brothers was greatly suspected in England before the Restoration. These suspicions acquired strength after the king's return, through his manifest intention not to marry a protestant; and still more through the presumptuous demeanor of the opposite party, which seemed to indicate some surer grounds of confidence than were yet manifest. The new parliament, in its first session, had made it penal to say that the king was a papist or popishly affected; whence the prevalence of that scandal may be inferred.

Charles had no assistance to expect, in his scheme of granting a full toleration to the Roman faith, from his chief adviser, Clarendon. A repeal of the sanguinary laws, a reasonable connivance, perhaps in some cases a dispensation — to these favors he would have acceded. But in his creed of policy the legal allowance of any but the established religion was inconsistent with public order, and with the king's ecclesiastical prerogative. This was also a fixed principle with the parliament, whose implacable resentment toward the sectaries had not inclined them to abate in the least of their abhorrence and apprehension of popery. The church of En-

gland, distinctly and exclusively, was their rallying-point; the crown itself stood only second in their affections. The king, therefore, had recourse to a more subtle and indirect policy. If the terms of conformity had been so far relaxed as to suffer the continuance of the presbyterian clergy in their benefices, there was every reason to expect, from their known disposition, a determined hostility to all approaches toward popery, and even to its toleration. It was, therefore, the policy of those who had the interests of that cause at heart to permit no deviation from the act of uniformity, to resist all endeavors at a comprehension of dissenters within the pale of the church, and to make them look up to the king for indulgence in their separate way of worship. They were to be taught that, amenable to the same laws as the Romanists, exposed to the oppression of the same enemies, they must act in concert for a common benefit. The presbyterian ministers, disheartened at the violence of the parliament, had recourse to Charles, whose affability and fair promises they were loath to distrust, and implored his dispensation for their non-conformity. The king, naturally irresolute, and doubtless sensible that he had made a bad return to those who had contributed so much toward his restoration, was induced, at the strong solicitation of lord Manchester, to promise that he would issue a declaration suspending the execution of the statute for three months. Clarendon, though he had been averse to some of the rigorous clauses inserted in the act of uniformity, was of opinion that, once passed, it ought to be enforced without any connivance; and told the king, likewise, that it was not in his power to preserve those who did not comply with it from deprivation. Yet, as the king's word had been given, he advised him rather to issue such a declaration than to break his promise. But, the bishops vehemently remonstrating against it, and intimating that they would not be parties to a violation of the law by refusing to institute a clerk presented by the patron on an avoidance for want of conformity in the incumbent, the king gave way, and resolved to make no kind of concession. It is remarkable that the noble historian does not seem struck at the enormous and unconstitutional prerogative which a proclamation suspending the statute would have assumed.

§ 24. Instead of this very objectionable measure, the king accepted one less arbitrary, and more consonant to his own secret policy. He published a declaration in favor of liberty of conscience, for which no provision had been made, so as to redeem the promises he had held forth at his accession.

Adverting to these, he declared that, "as in the first place he had been zealous to settle the uniformity of the church of England in discipline, ceremony, and government, and should ever constantly maintain it, so, as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereto, he should make it his special care, so far as in him lay, without invading the freedom of parliament, to incline their wisdom next approaching sessions to concur with him in making some such act for that purpose as may enable him to exercise with a more universal satisfaction that power of dispensing which he conceived to be inherent in him."

The aim of this declaration was to obtain from parliament a mitigation, at least, of all penal statutes in matters of religion, but more to serve the interests of catholic than of protestant non-conformity. Except, however, the allusion to the dispensing power, which yet is very moderately alleged, there was nothing in it, according to our present opinions, that should have created offense. But the commons, on their meeting in February, 1663, presented an address, denying that any obligation lay on the king by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and slightly intimating that he possessed no such dispensing prerogative as was suggested. They strongly objected to the whole scheme of indulgence, as the means of increasing sectaries, and rather likely to occasion disturbance than to promote peace. The king, undeceived as to the disposition of this lawful assembly to concur in his projects of religious liberty, was driven to more tedious and indirect courses in order to compass his end. He had the mortification of finding that the house of commons had imbibed, partly perhaps in consequence of this declaration, that jealous apprehension of popery which had caused so much of his father's ill fortune. On this topic the watchfulness of an English parliament could never be long at rest. The notorious insolence of the Romish priests, who, proud of the court's favor, disdained to respect the laws enough to disguise themselves, provoked an address to the king that they might be sent out of the kingdom; and bills were brought in to prevent the further growth of popery.

§ 25. Meanwhile, the same remedy, so infallible in the eyes of legislators, was not forgotten to be applied to the opposite disease of protestant dissent. Some had believed that, all scruples of tender conscience in the presbyterian clergy being faction and hypocrisy, they would submit very quietly

to the law, when they found all their clamor unavailing to obtain a dispensation from it. The resignation of 2000 beneficed ministers at once, instead of extorting praise, rather inflamed the resentment of their bigoted enemies; especially when they perceived that a public and perpetual toleration of separate worship was favored by part of the court. Rumors of conspiracy and insurrection, sometimes false, but gaining credit from the notorious discontent both of the old commonwealth's party, and of many who had never been on that side, were sedulously propagated, in order to keep up the animosity of parliament against the ejected clergy; and these are recited as the pretext of an act passed in 1664, for suppressing seditious conventicles (the epithet being in this place wantonly and unjustly insulting), which inflicted on all persons above the age of sixteen, present at any religious meeting in other manner than is allowed by the practice of the church of England, where five or more persons besides the household should be present, a penalty of three months' imprisonment for the first offense, of six for the second, and of seven years' transportation for the third, on conviction before a single justice of peace. The jails were filled, not only with ministers who had borne the brunt of former persecutions, but with the laity who attended them; and the hardship was the more grievous, that, the act being ambiguously worded, its construction was left to a single magistrate, generally very adverse to the accused.

§ 26. It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext, and thus to create a necessity for a legislature that will not retrace its steps to pass still onward in the course of severity. In the next session accordingly, held at Oxford in 1665, on account of the plague that ravaged the capital, we find a new and more inevitable blow aimed at the fallen church of Calvin. It was enacted that all persons in holy orders, who had not subscribed the act of uniformity, should swear that it is not lawful, upon any pretense whatsoever, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavor any alteration of government in church or state. Those who refused this oath were not only made incapable of teaching in schools, but prohibited from coming within five miles of any city, corporate town, or borough sending members to parliament.

This persecuting statute did not pass without the opposi-

tion of the earl of Southampton, lord treasurer, and other peers. But archbishop Sheldon, and several bishops, strongly supported the bill, which had undoubtedly the sanction also of Clarendon's authority. The far greater number of the non-conforming clergy refused to take the oath. Even if they could have borne the solemn assertion of the principles of passive obedience in all possible cases, their scrupulous consciences revolted from a pledge to endeavor at no kind of alteration in church and state; an engagement, in its extended sense, irreconcilable with their own principles in religion, and with the civil duties of Englishmen. Yet to quit the town where they had long been connected, and where alone they had friends and disciples, for a residence in country villages, was an exclusion from the ordinary means of subsistence. The church of England had doubtless her provocations; but she made the retaliation much more than commensurate to the injury. No severity, comparable to this cold-blooded persecution, had been inflicted by the late powers, even in the ferment and fury of a civil war. Encouraged by this easy triumph, the violent party in the house of commons thought it a good opportunity to give the same test a more sweeping application. A bill was brought in imposing this oath upon the whole nation; that is, I presume (for I do not know that its precise nature is anywhere explained), on all persons in any public or municipal trust. This, however, was lost on a division by a small majority.

§ 27. A joy so excessive and indiscriminating had accompanied the king's restoration, that no prudence or virtue in his government could have averted that reaction of popular sentiment which inevitably follows the disappointment of unreasonable hope. What, then, was the discontent that must have ensued upon the restoration of Charles II.? The neglected cavalier, the persecuted presbyterian, the disbanded officer, had each his grievance, and felt that he was either in a worse situation than he had formerly been, or at least than he had expected to be. Though there were not the violent acts of military power which had struck every man's eyes under Cromwell, it can not be said that personal liberty was secure, or that the magistrates had not considerable power of oppression, and that pretty unsparingly exercised toward those suspected of disaffection. The religious persecution was not only far more severe than it was ever during the commonwealth, but perhaps more extensively felt than under Charles I. Though the monthly assess-

ments for the support of the army ceased soon after the restoration, several large grants were made by parliament, especially during the Dutch war; and it appears that in the first seven years of Charles II. the nation paid a far greater sum in taxes than in any preceding period of the same duration. If, then, the people compared the national fruits of their expenditure, what a contrast they found, how deplorable a falling off in public honor and dignity since the days of the magnanimous usurper![1] They saw with indignation that Dunkirk, acquired by Cromwell, had been chaffered away by Charles (a transaction justifiable, perhaps, on the mere balance of profit and loss, but certainly derogatory to the pride of a great nation); that a war, needlessly commenced, had been carried on with much display of bravery in our seamen and their commanders, but no sort of good conduct in the government; and that a petty northern potentate, who would have trembled at the name of the commonwealth, had broken his faith toward us out of mere contempt of our inefficiency.[2]

§ 28. These discontents were heightened by the private conduct of Charles, if the life of a king can in any sense be private, by a dissoluteness and contempt of moral opinion, which a nation still in the main grave and religious could not endure. The austere character of the last king had repressed to a considerable degree the common vices of a court which had gone to a scandalous excess under James. But the cavaliers in general affected a profligacy of manners, as their distinction from the fanatical party, which gained ground among those who followed the king's fortunes in exile, and became more flagrant after the restoration. Anecdotes of court excesses, which required not the aid of exaggeration, were in daily circulation through the coffee-houses;

[1] Pepys observes, 12th of July, 1667, "how every body nowadays reflect upon Oliver and commend him, what brave things he did, and made all the neighbor princes fear him."

[2] Clarendon, while he admits these discontents, and complains of the decay of trade, asserts them to be unfounded. No estate could be put up to sale anywhere but a purchaser was found for it: vol. ii., p. 364. The main question, however, is at what rate he would purchase. Rents, he owns, had suddenly fallen 25 per cent., which caused a clamor against taxes, presumed to be the cause of it. But the truth is that wheat, which had been at a very high price for a few years just before and after the restoration, fell about 1663; and there is no doubt that the reign of Charles II. was not favorable to the landed interest. Lady Sunderland tells us, in a letter of 1681, that "the manor of Worme-Leighton, which, when I was married [1662], was let for £3200, is now let for £2300." On the other hand, sir Josiah Child asserts that there were more men on change worth £10,000 in 1680, than there were in 1660 worth £1000, and that a hundred coaches were kept for one formerly. Lands yielded twenty years' purchase which, when he was young, were not worth above eight or ten. See Macpherson's Annals of Commerce, ad A.D. 1660.

those who cared least about the vice not failing to inveigh against the scandal. It is in the nature of a limited monarchy that men should censure very freely the private lives of their princes, as being more exempt from that immoral servility which blinds itself to the distinctions of right and wrong in elevated rank. And as a voluptuous court will always appear prodigal, because all expense in vice is needless, they had the mortification of believing that the public revenues were wasted on the vilest associates of the king's debauchery. We are, however, much indebted to the memory of Barbara, duchess of Cleveland, Louisa, duchess of Portsmouth, and Mrs. Eleanor Gwyn. We owe a tribute of gratitude to the Mays, the Killigrews, the Chiffinches, and the Grammonts. They played a serviceable part in ridding the kingdom of its besotted loyalty. They saved our forefathers from the star-chamber and the high-commission court; they labored in their vocation against standing armies and corruption; they pressed forward the great ultimate security of English freedom, the expulsion of the house of Stuart.

§ 29. Among the ardent loyalists who formed the bulk of the present parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus, round which the lesser factions that circumstances should produce might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. Nothing can more demonstrate the incompatibility of the tory system, which would place the virtual and effective, as well as nominal, administration of the executive government in the sole hands of the crown, with the existence of a representative assembly, than the history of this long parliament of Charles II. None has ever been elected in circumstances so favorable for the crown, none ever brought with it such high notions of prerogative; yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the house of commons matured and extended those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times; and, as the exercise of these

functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable or even fundamental, and were prepared for that more perfect settlement of the constitution on a more republican basis which took place after the revolution. The reign of Charles II., though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament.

§ 30. The commons took advantage of the pressure which the war with Holland brought on the administration, to establish two very important principles on the basis of their sole right of taxation. The first of these was the appropriation of supplies to limited purposes. In the session of 1665 an enormous supply, as it then appeared, of £1,250,000, after one of double that amount in the preceding year, having been voted for the Dutch war, sir George Downing, one of the tellers of the exchequer, introduced into the subsidy bill a proviso that the money raised by virtue of that act should be applicable only to the purposes of the war. Clarendon inveighed with fury against this, as an innovation derogatory to the honor of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily by the bankers, in anticipation of the revenue, upon this better security for speedy repayment, insisted that it should not be thrown out. That supplies granted by parliament are only to be expended for particular objects specified by itself, became, from this time, an undisputed principle, recognized by frequent and at length constant practice. It drew with it the necessity of estimates regularly laid before the house of commons; and, by exposing the management of the public revenues, has given to parliament not only a real and effective control over an essential branch of the executive administration, but, in some measure, rendered them partakers in it.

§ 31. It was a consequence of this right of appropriation that the house of commons should be able to satisfy itself as to the expenditure of their moneys in the services for which they were voted. In the year 1666, the large cost and indifferent success of the Dutch war begetting vehement suspi-

cions, not only of profuseness, but of diversion of the public money from its proper purposes, the house appointed a committee to inspect the accounts of the officers of the navy, ordnance, and stores, which were laid before them, as it appears, by the king's direction. This committee, after some time, having been probably found deficient in powers, and particularly being incompetent to administer an oath, the house determined to proceed in a more novel and vigorous manner; and sent up a bill, nominating commissioners to inspect the public accounts, who were to possess full powers of inquiry, and to report with respect to such persons as they should find to have broken their trust. Clarendon opposed the bill, in the house of lords, with much of that intemperate warmth which distinguished him, and with a contempt of the lower house and its authority, as imprudent in respect to his own interests as it was unbecoming and unconstitutional. The king prorogued parliament while the measure was depending; but in hopes to pacify the house of commons, promised to issue a commission under the great seal for the examination of public accountants; an expedient which was not likely to bring more to light than suited his purpose. But it does not appear that this royal commission, though actually prepared and sealed, was ever carried into effect; for in the ensuing session, the great minister's downfall having occurred in the mean time, the house of commons brought forward again their bill, which passed into a law. It invested the commissioners therein nominated with very extensive and extraordinary powers, both as to auditing public accounts and investigating the frauds that had taken place in the expenditure of money and employment of stores. They were to examine upon oath, to summon inquests if they thought fit, to commit persons disobeying their orders to prison without bail, to determine finally on the charge and discharge of all accountants; the barons of the exchequer, upon a certificate of their judgment, were to issue process for recovering money to the king's use, as if there had been an immediate judgment of their own court. Reports were to be made of the commissioners' proceedings from time to time to the king and to both houses of parliament. None of the commissioners were members of either house. The king, as may be supposed, gave way very reluctantly to this interference with his expenses. It brought to light a great deal of abuse and misapplication of the public revenues, and contributed doubtless in no small degree to destroy the house's confidence in the integrity of government, and to promote a more jealous

watchfulness of the king's designs. At the next meeting of parliament, in October, 1669, sir George Carteret, treasurer of the navy, was expelled the house for issuing money without legal warrant.

§ 32. Sir Edward Hyde, whose influence had been almost annihilated in the last years of Charles I., through the inveterate hatred of the queen and those who surrounded her, acquired by degrees the entire confidence of the young king, and baffled all the intrigues of his enemies. Guided by him, in all serious matters, during the latter years of his exile, Charles followed his counsels almost implicitly in the difficult crisis of the restoration. The office of chancellor and the title of earl of Clarendon were the proofs of the king's favor; but in effect, through the indolence and ill health of Southampton, as well as their mutual friendship, he was the real minister of the crown. By the clandestine marriage of his daughter with the duke of York, he changed one brother from an enemy to a sincere and zealous friend, without forfeiting the esteem and favor of the other. And though he was wise enough to dread the invidiousness of such an elevation, yet for several years it by no means seemed to render his influence less secure.

Both in their characters, however, and turn of thinking, there was so little in conformity between Clarendon and his master, that the continuance of his ascendency can only be attributed to the power of early habit over the most thoughtless tempers. But it rarely happens that kings do not ultimately shake off these fetters, and release themselves from the sort of subjection which they feel in acting always by the same advisers. Charles, acute himself and cool-headed, could not fail to discover the passions and prejudices of his minister, even if he had wanted the suggestion of others who, without reasoning on such broad principles as Clarendon, were perhaps his superiors in judging of temporary business. He wished too, as is common, to depreciate a wisdom, and to suspect a virtue, which seemed to reproach his own vice and folly. Nor had Clarendon spared those remonstrances against the king's course of life which are seldom borne without impatience or resentment. He was strongly suspected by the king as well as his courtiers (though, according to his own account, without any reason) of having promoted the marriage of Miss Stewart with the duke of Richmond. But, above all, he stood in the way of projects which, though still probably unsettled, were floating in the king's mind. No one was more zealous to uphold the prerogative at a height

where it must overtop and chill with its shadow the privileges of the people. No one was more vigilant to limit the functions of parliament, or more desirous to see them confiding and submissive. But there were landmarks which he could never be brought to transgress. He would prepare the road for absolute monarchy, but not introduce it; he would assist to batter down the walls, but not to march into the town. His notions of what the English constitution ought to be appear evidently to have been derived from the times of Elizabeth and James I., to which he frequently refers with approbation. In the history of that age he found much that could not be reconciled to any liberal principles of government. But there were two things which he certainly did not find — a revenue capable of meeting an extraordinary demand without parliamentary supply, and a standing army. Hence he took no pains, if he did not even, as is asserted by Burnet, discourage the proposal of others, to obtain such a fixed annual revenue for the king on the restoration as would have rendered it very rarely necessary to have recourse to parliament, and did not advise the keeping up any part of the army. That a few troops were retained was owing to the duke of York. Nor did he go the length that was expected in procuring the repeal of all the laws that had been enacted in the long parliament.

These omissions sank deep in Charles's heart, especially when he found that he had to deal with an unmanageable house of commons, and must fight the battle for arbitrary power; which might have been achieved, he thought, without a struggle by his minister. There was still less hope of obtaining any concurrence from Clarendon in the king's designs as to religion. Though he does not once hint at it in his writings, there can be little doubt that he must have suspected his master's inclinations toward the church of Rome. The duke of York considered this as the most likely cause of his remissness in not sufficiently advancing the prerogative. He was always opposed to the various schemes of a general indulgence toward popery, not only from his strongly protestant principles and his dislike of all toleration, but from a prejudice against the body of the English catholics, whom he thought to arrogate more on the ground of merit than they could claim. That interest, so powerful at court, was decidedly hostile to the chancellor; for the duke of York, who strictly adhered to him, if he had not kept his change of religion wholly secret, does not seem to have hitherto formed any avowed connection with the popish party.

§ 33. This estrangement of the king's favor is sufficient to account for Clarendon's loss of power; but his entire ruin was rather accomplished by a strange coalition of enemies, which his virtues, or his errors and infirmities, had brought into union. The cavaliers hated him on account of the act of indemnity, and the presbyterians for that of uniformity. Yet the latter were not in general so eager in his prosecution as the others. But he owed great part of the severity with which he was treated to his own pride and ungovernable passionateness, by which he had rendered very eminent men in the house of commons implacable, and to the language he had used as to the dignity and privileges of the house itself. A sense of this eminent person's great talents as well as general integrity and conscientiousness on the one hand, an indignation at the king's ingratitude and the profligate counsels of those who supplanted him on the other, have led most writers to overlook his faults in administration, and to treat all the articles of accusation against him as frivolous or unsupported. It is doubtless impossible to justify the charge of high treason on which he was impeached; but there are matters that never were or could be disproved; and our own knowledge enables us to add such grave accusations as must show Clarendon's unfitness for the government of a free country.

§ 34.—1. It is the fourth article of his impeachment, that he "advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner." This was undoubtedly true. There was some ground for apprehension on the part of the government from those bold spirits who had been accustomed to revolutions, and drew encouragement from the vices of the court and the embarrassments of the nation. Ludlow and Algernon Sidney, about the year 1665, had projected an insurrection, the latter soliciting Louis XIV. and the pensionary of Holland for aid. Many officers of the old army, Wildman, Creed, and others, suspected, perhaps justly, of such conspiracies, had been illegally detained in prison for several years, and only recovered their liberty on Clarendon's dismissal. He had too much encouraged the hateful race of informers, though he admits that it had grown a trade by which men got money, and that many were committed on slight grounds. Thus colonel Hutchinson died in the close confinement of a remote prison, far more

probably on account of his share in the death of Charles I., from which the act of indemnity had discharged him, than any just pretext of treason. It was difficult to obtain a habeas corpus from some of the judges in this reign. But to elude that provision by removing men out of the kingdom was such an offense against the constitution as may be thought enough to justify the impeachment of any minister.

2. The first article, and certainly the most momentous, asserts, "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." This was prodigiously exaggerated; yet there was some foundation for a part of it. In the disastrous summer of 1667, when the Dutch fleet had insulted our coasts and burned our ships in the Medway, the exchequer being empty, it was proposed in council to call together immediately the parliament, which then stood prorogued to a day at the distance of some months. Clarendon, who feared the hostility of the house of commons toward himself, and had pressed the king to dissolve it, maintained that they could not legally be summoned before the day fixed; and, with a strange inconsistency, attaching more importance to the formalities of law than to its essence, advised that the counties where the troops were quartered should be called upon to send in provisions, and those where there were no troops to contribute money, which should be abated out of the next taxes. And he admits that he might have used the expression of raising contributions, as in the late civil war. This unguarded and unwarrantable language, thrown out at the council-table where some of his enemies were sitting, soon reached the ears of the commons, and, mingled up with the usual misrepresentations of faction, was magnified into a charge of high treason.

3. The eleventh article charged lord Clarendon with having advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, for no greater value than the ammunition, artillery, and stores were worth. The latter part is generally asserted to be false. The sum received is deemed the utmost that Louis would have given, who thought he had made a close bargain. But it is very difficult to reconcile what Clarendon asserts in his defense, and much more at length in his "Life" (that the business of Dunkirk was entirely decided before he had any thing to

do in it, by the advice of Albemarle and Sandwich), with the letters of d'Estrades, the negotiator in this transaction on the part of France. In these letters, written at the time to Louis XIV., Clarendon certainly appears not only as the person chiefly concerned, but as representing himself almost the only one of the council favorable to the measure, and having to overcome the decided repugnance of Southampton, Sandwich, and Albemarle. I can not, indeed, see any other explanation than that he magnified the obstacles in the way of this treaty, in order to obtain better terms; a management not very unusual in diplomatical dealing, but, in the degree at least to which he carried it, scarcely reconcilable with the good faith we should expect from this minister. For the transaction itself, we can hardly deem it honorable or politic. The expense of keeping up Dunkirk, though not trifling, would have been willingly defrayed by parliament, and could not well be pleaded by a government which had just incumbered itself with the useless burden of Tangier. That its possession was of no great direct value to England must be confessed; but it was another question whether it ought to have been surrendered into the hands of France.

4. This close connection with France is indeed a great reproach to Clarendon's policy, and was the spring of mischiefs to which he contributed, and which he ought to have foreseen. The capital misdemeanor that he committed in this relation with France was the clandestine solicitation of pecuniary aid for the king. He first taught a lavish prince to seek the wages of dependence in a foreign power, to elude the control of parliament by the help of French money. The purpose for which this aid was asked—the succor of Portugal—might be fair and laudable; but the precedent was most base, dangerous, and abominable. A king who had once tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterward of abstaining from it than a dog from his greasy offal.

§ 35. These are the errors of Clarendon's political life; which, besides his notorious concurrence in all measures of severity and restraint toward the non-conformists, tend to diminish our respect for his memory, and to exclude his name from that list of great and wise ministers where some are willing to place him near the head. If I may seem to my readers less favorable to so eminent a person than common history might warrant, it is at least to be said that I have formed my decision from his own recorded sentiments, or from equally undisputable sources of authority. But the

manifest profligacy of those who contributed most to his ruin, and the measures which the court took soon afterward, have rendered his administration comparatively honorable, and attached veneration to his memory. We are unwilling to believe that there was any thing to censure in a minister whom Buckingham persecuted, and against whom Arlington intrigued.

§ 36. An eminent characteristic of Clarendon had been his firmness, called indeed, by most, pride and obstinacy, which no circumstances, no perils, seemed likely to bend. But his spirit sunk all at once with his fortune. Clinging too long to office, and cheating himself against all probability with a hope of his master's kindness when he had lost his confidence, he forgot that dignified philosophy which ennobles a voluntary retirement, that stern courage which innocence ought to inspire; and, hearkening to the king's treacherous counsels, fled before his enemies into a foreign country. Though the impeachment, at least in the point of high treason, can not be defended, it is impossible to deny that the act of banishment, under the circumstances of his flight, was capable, in the main, of full justification. In an ordinary criminal suit, a process of outlawry goes against the accused who flies from justice; and his neglect to appear within a given time is equivalent, in cases of treason or felony, to a conviction of the offense; can it be complained of that a minister of state, who dares not confront a parliamentary impeachment, should be visited with an analogous penalty? But, whatever injustice and violence may be found in this prosecution, it established forever the right of impeachment, which the discredit into which the long parliament had fallen exposed to some hazard; the strong abettors of prerogative, such as Clarendon himself, being inclined to dispute this responsibility of the king's advisers to parliament. The commons had, in the preceding session, sent up an impeachment against lord Mordaunt, upon charges of so little public moment, that they may be suspected of having chiefly had in view the assertion of this important privilege. It was never called in question from this time; and, indeed, they took care during the remainder of this reign that it should not again be endangered by a paucity of precedents.

§ 37. The period between the fall of Clarendon in 1667, and the commencement of lord Danby's administration in 1673, is generally reckoned one of the most disgraceful in the annals of our monarchy. This was the age of what is usually denominated the Cabal administration, from the five initial

letters of sir Thomas Clifford, first commissioner of the treasury, afterward lord Clifford and high treasurer; the earl of Arlington, secretary of state; the duke of Buckingham; lord Ashley, chancellor of the exchequer, afterward earl of Shaftesbury and lord chancellor; and, lastly, the duke of Lauderdale. Yet, though the counsels of these persons soon became extremely pernicious and dishonorable, it must be admitted that the first measures after the banishment of Clarendon, both in domestic and foreign policy, were highly praiseworthy. Bridgeman, who succeeded the late chancellor in the custody of the great seal, with the assistance of chief baron Hale and bishop Wilkins, and at the instigation of Buckingham, who, careless about every religion, was from humanity or politic motives friendly to the indulgence of all, laid the foundations of a treaty with the non-conformists, on the basis of a comprehension for the presbyterians, and a toleration for the rest. They had nearly come, it is said, to terms of agreement, so that it was thought time to intimate their design in a speech from the throne. But the spirit of 1662 was still too powerful in the commons; and the friends of Clarendon, whose administration this change of counsels seemed to reproach, taking a warm part against all indulgence, a motion that the king be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his protestant subjects, was negatived by 176 to 70. They proceeded, by almost an equal majority, to continue the bill of 1664, for suppressing seditious conventicles; which failed, however, for the present, in consequence of the sudden prorogation.

§ 38. But whatever difference of opinion might at that time prevail with respect to this tolerant disposition of the new government, there was none as to their great measure in external policy, the triple alliance with Holland and Sweden. A considerable and pretty sudden change had taken place in the temper of the English people toward France. The national prejudices, from the accession of Elizabeth to the restoration, ran far more against Spain; and it is not surprising that the apprehensions of that ambitious monarchy, which had been very just in the age of Philip II., should have lasted longer than its ability or inclination to molest us. But the rapid declension of Spain after the peace of the Pyrenees, and the towering ambition of Louis XIV., master of a kingdom intrinsically so much more formidable than its rival, manifested that the balance of power in Europe, and our own immediate security, demanded a steady

opposition to the aggrandizement of one monarchy, and a regard to the preservation of the other. These, indeed, were rather considerations for statesmen than for the people; but Louis was become unpopular both by his acquisition of Dunkirk at the expense, as it was thought, of our honor, and much more deservedly by his shuffling conduct in the Dutch war, and union in it with our adversaries. Nothing, therefore, gave greater satisfaction in England than the triple alliance, and consequent peace of Aix la Chapelle, which saved the Spanish Netherlands from absolute conquest, though not without important sacrifices.

§ 39. Charles himself meanwhile by no means partook in this common jealousy of France. He had, from the time of his restoration, entered into close relations with that power, which a short period of hostility had interrupted without leaving any resentment in his mind. It is now known that, while his minister was negotiating at the Hague for the triple alliance, he had made overtures for a clandestine treaty with Louis, through his sister the duchess of Orleans, the duke of Buckingham, and the French ambassador Rouvigny.

Charles II. was not of a temperament to desire arbitrary power, either through haughtiness and conceit of his station, which he did not greatly display, or through the love of taking into his own hands the direction of public affairs, about which he was in general pretty indifferent. He did not wish, as he told lord Essex, to sit like a Turkish sultan, and sentence men to the bowstring, but could not bear that a set of fellows should inquire into his conduct. His aim, in fact, was liberty rather than power; it was that immunity from control and censure in which men of his character place a great part of their happiness. For some years he had cared probably very little about enhancing his prerogative, content with the loyalty, though not quite with the liberality, of his parliament. And had he not been drawn, against his better judgment, into the war with Holland, this harmony might perhaps have been protracted a good deal longer. But the vast expenditure of that war, producing little or no decisive success, and coming unfortunately at a time when trade was not very thriving, and when rents had considerably fallen, exasperated all men against the prodigality of the court, to which they might justly ascribe part of their burdens, and with the usual miscalculations, believed that much more of them was due. Hence the bill appointing commissioners of public account, so ungrateful to the king, whose personal rep-

utation it was likely to affect, and whose favorite excesses it might tend to restrain.

He was almost equally provoked by the license of his people's tongues. A court like that of Charles is the natural topic of the idle, as well as the censorious. An administration so ill conducted could not escape the remarks of a well-educated and intelligent city. Those who stood nearest to the king were not backward to imitate his discontent at the privileges of his people and their representatives. The language of courtiers and court ladies is always intolerable to honest men, especially that of such courtiers as surrounded the throne of Charles II. It is worst of all amidst public calamities, such as pressed very closely on one another in a part of his reign—the awful pestilence of 1665, the still more ruinous fire of 1666, the fleet burned by the Dutch in the Medway next summer. No one could reproach the king for outward inactivity or indifference during the great fire. But there were some, as Clarendon tells us, who presumed to assure him "that this was the greatest blessing that God had ever conferred on him, his restoration only excepted; for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought it necessary for his service, there being no other way to govern that rude multitude but by force." It seems probable that this loose and profligate way of speaking gave rise, in a great degree, to the suspicion that the city had been purposely burned by those who were more enemies to religion and liberty than to the court. The papists stood ready to bear the infamy of every unproved crime; and a committee of the house of commons collected evidence enough for those who were already convinced that London had been burned by that obnoxious sect.

The retention of the king's guards had excited some jealousy, though no complaints seem to have been made of it in parliament; but the sudden levy of a considerable force in 1667, however founded upon a very plausible pretext from the circumstances of the war, lending credit to these dark surmises of the court's sinister designs, gave much greater alarm. The commons, summoned together in July, instantly addressed the king to disband his army as soon as the peace should be made.

This change in public sentiment gave warning to Charles

that he could not expect to reign with as little trouble as he had hitherto experienced; and doubtless the recollection of his father's history did not contribute to cherish the love he sometimes pretended for parliaments. His brother, more reflecting, and more impatient of restraint on royal authority, saw, with still greater clearness than the king, that they could only keep the prerogative at its desired height by means of intimidation. A regular army was indispensable; but to keep up an army in spite of parliament, or to raise money for its support without parliament, was a very difficult undertaking. It seemed necessary to call in a more powerful arm than their own; and, by establishing the closest union with the king of France, to obtain either military or pecuniary succors from him, as circumstances might demand. But there was another and not less imperious motive for a secret treaty. The king, as has been said, though little likely, from the tenor of his life, to feel very strong and lasting impressions of religion, had at times a desire to testify publicly his adherence to the Romish communion. The duke of York had come more gradually to change the faith in which he was educated. He describes it as the result of patient and anxious inquiry; nor would it be possible, therefore, to fix a precise date for his conversion, which seems to have been not fully accomplished till after the restoration. He, however, continued in conformity to the church of England, till, on discovering that the catholic religion exacted an outward communion, which he had fancied not indispensable, he became more uneasy at the restraint that policy imposed on him. This led to a conversation with the king, and to a close union with Clifford and Arlington, from whom he had stood aloof on account of their animosity against Clarendon. The king and duke held a consultation with those two ministers, and with lord Arundel of Wardour, on the 25th of January, 1669, to discuss the ways and methods fit to be taken for the advancement of the catholic religion in these kingdoms. The king spoke earnestly, and with tears in his eyes. After a long deliberation, it was agreed that there was no better way to accomplish this purpose than through France, the house of Austria being in no condition to give any assistance.

§ 40. The famous secret treaty, which, though believed on pretty good evidence not long after the time, was first actually brought to light by Dalrymple about half a century since, began to be negotiated very soon after this consultation. In one of his letters to the duchess of Orleans, dated June 6, 1669, the methods the king was adopting to secure

himself in this perilous juncture appear. He was to fortify Plymouth, Hull, and Portsmouth, and to place them in trusty hands. The fleet was under the duke, as lord admiral; the guards and their officers were thought in general well affected; but his great reliance was on the most Christian king. He stipulated for £200,000 annually, and for the aid of 6000 French troops. In return for such important succor, Charles undertook to serve his ally's ambition and wounded pride against the United Provinces. These, when conquered by the French arms, with the co-operation of an English navy, were already shared by the royal conspirators. A part of Zealand fell to the lot of England, the remainder of the Seven Provinces to France, with an understanding that some compensation should be made to the prince of Orange. In the event of any new rights to the Spanish monarchy accruing to the most Christian king, as it is worded (that is, on the death of the king of Spain, a sickly child), it was agreed that England should assist him with all her force by sea and land, but at his own expense; and should obtain not only Ostend and Minorca, but, as far as the king of France could contribute to it, such parts of Spanish America as she should choose to conquer. So strange a scheme of partitioning that vast inheritance was never, I believe, suspected till the publication of the treaty.

§ 41. Each conspirator, in his coalition against the protestant faith and liberties of Europe, had splendid objects in view; but those of Louis seemed by far the more probable of the two, and less liable to be defeated. The full completion of their scheme would have reunited a great kingdom to the catholic religion, and turned a powerful neighbor into a dependent pensioner. But should this fail (and Louis was too sagacious not to discern the chances of failure), he had pledged to him the assistance of an ally in subjugating the republic of Holland, which, according to all human calculation, could not withstand their united efforts. Charles, on the other hand, besides that he had no other return to make for the necessary protection of France, was impelled by a personal hatred of the Dutch, and by the consciousness that their commonwealth was the standing reproach of arbitrary power, to join readily in the plan for its subversion. But, looking first to his own objects, and perhaps a little distrustful of his ally, he pressed that his profession of the Roman catholic religion should be the first measure in prosecution of the treaty; and that he should immediately receive the stipulated £200,000, or at least a part of the money. Louis

insisted that the declaration of war against Holland should precede. This difference occasioned a considerable delay; and it was chiefly with a view of bringing round her brother on this point that the duchess of Orleans took her famous journey to Dover in the spring of 1670. Yet, notwithstanding her influence, which passed for irresistible, he persisted in adhering to the right reserved to him in the draft of the treaty of choosing his own time for the declaration of his religion; and it was concluded on this footing at Dover, by Clifford, Arundel, and Arlington, on the 22d of May, 1670, during the visit of the duchess of Orleans.

A mutual distrust, however, retarded the further progress of this scheme, one party unwilling to commit himself till he should receive money, the other too cautious to run the risk of throwing it away. There can be no question but that the king of France was right in urging the conquest of Holland as a preliminary of the more delicate business they were to manage in England; and, from Charles's subsequent behavior, as well as his general fickleness and love of ease, there seems reason to believe that he would gladly have receded from an undertaking of which he must every day have more strongly perceived the difficulties. He confessed, in fact, to Louis's ambassador, that he was almost the only man in his kingdom who liked a French alliance. The change of religion, on a nearer view, appeared dangerous for himself and impracticable as a national measure. He had not dared to intrust any of his protestant ministers, even Buckingham, whose indifference in such points was notorious, with this great secret; and, to keep them the better in the dark, a mock negotiation was set on foot with France, and a pretended treaty actually signed, the exact counterpart of the other, except as to religion. Buckingham, Shaftesbury, and Lauderdale were concerned in this simulated treaty, the negotiation for which did not commence till after the original convention had been signed at Dover.

The court of France, having yielded to Charles the point about which he had seemed so anxious, had soon the mortification to discover that he would take no steps to effect it. They now urged that immediate declaration of his religion, which they had, for very wise reasons, not long before dissuaded. The king of England hung back, and tried so many excuses, that they had reason to suspect his sincerity; not that in fact he had played a feigned part from the beginning, but his zeal for popery having given way to the seductions of a voluptuous and indolent life, he had been led, with

the good sense he naturally possessed, to form a better estimate of his resources and of the opposition he must encounter. Meanwhile the eagerness of his ministers had plunged the nation into war with Holland, and Louis, having attained his principal end, ceased to trouble the king on the subject of religion. He received large sums from France during the Dutch war.

This memorable transaction explains and justifies the strenuous opposition made in parliament to the king and duke of York, and may be reckoned the first act of a drama which ended in the revolution. It is true that the precise terms of this treaty were not authentically known; but there can be no doubt that those who from this time displayed an insuperable jealousy of one brother, and a determined enmity to the other, had proofs enough for moral conviction of their deep conspiracy with France against religion and liberty. This suspicion is implied in all the conduct of that parliamentary opposition, and is the apology of much that seems violence and faction, especially in the business of the popish plot and the bill of exclusion. It is of importance also to observe that James II. was not misled and betrayed by false or foolish counselors, as some would suggest, in his endeavors to subvert the laws, but acted on a plan long since concerted, and in which he had taken a principal share.

It must be admitted that neither in the treaty itself, nor in the few letters which have been published by Dalrymple, do we find any explicit declaration either that the catholic religion was to be established as the national church, or arbitrary power introduced in England. But there are not wanting strong presumptions of this design. The king speaks, in a letter to his sister, of finding means to put the proprietors of church-lands out of apprehension. He uses the expression, "rétablir la religion catholique;" which, though not quite unequivocal, seems to convey more than a bare toleration or a personal profession by the sovereign. He talks of a negotiation with the court of Rome to obtain the permission of having mass in the vulgar tongue and communion in both kinds, as terms that would render his conversion agreeable to his subjects. He tells the French ambassador that not only his conscience, but the confusion he saw every day increasing in his kingdom to the diminution of his authority, impelled him to declare himself a catholic; which, besides the spiritual advantage, he believed to be the only means of restoring the monarchy. These passages, as well as the precautions taken in expectation of a vigorous resistance from a part of the na-

tion, appear to intimate a formal re-establishment of the catholic church; a measure connected, in the king's apprehension, if not strictly with arbitrary power, yet with a very material enhancement of his prerogative. For the profession of an obnoxious faith by the king, as an insulated person, would, instead of strengthening his authority, prove the greatest obstacle to it, as, in the next reign, turned out to be the case. Charles, however, and the duke of York deceived themselves into a confidence that the transition could be effected with no extraordinary difficulty. The king knew the prevailing laxity of religious principles in many about his court, and thought he had reason to rely on others as secretly catholic. The duke, who conversed more among divines, was led to hope, from the strange language of the high-church party, that they might readily be persuaded to make what seemed no long step, and come into easy terms of union. It was the constant policy of the romish priests to extenuate the differences between the two churches, and to throw the main odium of the schism on the calvinistic sects. And many of the Anglicans, in their abhorrence of protestant non-conformists, played into the hands of the common enemy.

§ 42. The court, however, entertained great hopes from the depressed condition of the dissenters, whom it was intended to bribe with that toleration under a catholic regimen which they could so little expect from the church of England. Hence the duke of York was always strenuous against schemes of comprehension, which would invigorate the protestant interest and promote conciliation. With the opposite view of rendering a union among protestants impracticable, the rigorous episcopalians were encouraged underhand to prosecute the non-conformists. The court promoted a renewal of the temporary act, passed in 1664 against conventicles, which was reinforced by the addition of an extraordinary proviso, "That all clauses in the act should be construed most largely and beneficially for suppressing conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof." Wilkins, the most honest of the bishops, opposed this act in the house of lords, notwithstanding the king's personal request that he would be silent. Sheldon, and others who, like him, disgraced the church of England by their unprincipled policy or their passions, not only gave it their earnest support at the time, but did all in their power to enforce its execution. As the king's temper was naturally tolerant, his co-operation in this severe measure would not easily be understood without the

explanation that a knowledge of his secret policy enables us to give.

But the factious, fanatical, republican party (such were the usual epithets of the court at the time) had gradually led away by their delusions that parliament of cavaliers; or, in other words, the glaring vices of the king, and the manifestations of designs against religion and liberty, had dispossessed them of a confiding loyalty which, though highly dangerous from its excess, had always been rather ardent than servile. The sessions had been short, and the intervals of repeated prorogations much longer than usual; a policy not well calculated for that age, where the growing discontents and suspicions of the people acquired strength by the stoppage of the regular channel of complaint. Yet the house of commons, during this period, though unmanageable on the one point of toleration, had displayed no want of confidence in the king, nor any animosity toward his administration; notwithstanding the flagrant abuses in the expenditure, which the parliament commission of public accounts had brought to light, and the outrageous assault on sir John Coventry, a crime notoriously perpetrated by persons employed by the court, and probably by the king's direct order.[3]

§ 43. The war with Holland at the beginning of 1672, so repugnant to English interests, so unwarranted by any provocation, so infamously piratical in its commencement, so ominous of further schemes still more dark and dangerous, finally opened the eyes of all men of integrity. It was accompanied by the shutting up of the exchequer, an avowed bankruptcy at the moment of beginning an expensive war,[4] and by the declaration of indulgence, or suspension of all penal laws in religion: an assertion of prerogative which seemed without limit. These exorbitances were the more scandalous, that they happened during a very long prorogation. Hence the court so lost the confidence of the house of commons that, with all the lavish corruption of the following period, it could never regain a secure majority on any important question. The superiority of what was called the

[3] This is asserted by Burnet, and seems to be acknowledged by the duke of York. The court endeavored to mitigate the effect of the bill brought into the commons in consequence of Coventry's injury; and so far succeeded, that, instead of a partial measure of protection for the members of the house of commons, as originally designed, it was turned into a general act, making it a capital felony to wound with intention to maim or disfigure. But the name of the Coventry act has always clung to this statute.

[4] The king promised the bankers interest at six per cent., instead of the money due to them from the exchequer; but this was never paid till the latter part of William's reign. It may be considered as the beginning of our national debt.

country party is referred to the session of February, 1673, in which they compelled the king to recall his proclamation suspending the penal laws, and raised a barrier against the encroachments of popery in the test act.

§ 44. The king's declaration of indulgence had been projected by Shaftesbury, in order to conciliate or lull to sleep the protestant dissenters. It redounded, in its immediate effect, chiefly to their benefit; the catholics already enjoying a connivance at the private exercise of their religion, and the declaration expressly refusing them public places of worship. The plan was most laudable in itself, could we separate the motives which prompted it, and the means by which it was pretended to be made effectual. But in the declaration the king says, "We think ourselves obliged to make use of that supreme power in ecclesiastical matters which is not only inherent in us, but hath been declared and recognized to be so by several statutes and acts of parliament." "We do," he says, not long afterward, "declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists or recusants, be immediately suspended, and they are hereby suspended." He mentions also his intention to license a certain number of places for the religious worship of non-conforming protestants.

It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favor of particular persons, and under certain restrictions. It was undeniable that the king might, by what is called a "noli prosequi," stop any criminal prosecution commenced in his courts, though not an action for the recovery of a pecuniary penalty, which, by many statutes, was given to the common informer. He might, of course, set at liberty, by means of a pardon, any person imprisoned, whether upon conviction or by a magistrate's warrant. Thus the operation of penal statutes in religion might, in a great measure, be rendered ineffectual by an exercise of undisputed prerogatives; and thus, in fact, the catholics had been enabled, since the accession of the house of Stuart, to withstand the crushing severity of the laws. But a pretension, in explicit terms, to suspend a body of statutes, a command to magistrates not to put them in execution, arrogated a sort of absolute power which no benefits of the indulgence itself (had they even been less insidiously offered) could induce a lover of constitutional privileges to endure.[5] Notwithstanding the affect-

[5] Bridgman, the lord keeper, resigned the great seal, according to Burnet, because

ed distinction of temporal and ecclesiastical matters, it was evident that the king's supremacy was as much capable of being bounded by the legislature in one as in the other, and that every law in the statute-book might be repealed by a similar proclamation. The house of commons voted that the king's prerogative in matters ecclesiastical does not extend to repeal acts of parliament, and addressed the king to recall his declaration. The king, in his answer to this address, lamented that the house should question his ecclesiastical power, which had never been done before. This brought on a fresh rebuke, and, in a second address, they positively deny the king's right to suspend any law. "The legislative power," they say, "has always been acknowledged to reside in the king and two houses of parliament." The king, in a speech to the house of lords, complained much of the opposition made by the commons, and found a majority of the former disposed to support him, though both houses concurred in an address against the growth of popery. At length, against the advice of the bolder part of his council, but certainly with a just sense of what he most valued, his ease of mind, Charles gave way to the public voice, and withdrew his declaration.

§ 45. The act of supremacy, in the first year of Elizabeth, had imposed on all accepting temporal as well as ecclesiastical offices an oath denying the spiritual jurisdiction of the pope. But though the refusal of this oath, when tendered, incurred various penalties, yet it does not appear that any were attached to its neglect, or that the oath was a previous qualification for the enjoyment of office, as it was made by a subsequent act of the same reign for sitting in the house of commons. It was found also, by experience, that persons attached to the Roman doctrine sometimes made use of strained constructions to reconcile the oath of supremacy to their faith. Nor could that test be offered to peers, who were excepted by a special provision. For these several reasons a more effectual security against popish counselors, at least in notorious power, was created by the famous test act of 1673, which renders the reception of the sacrament according to the rites of the church of England, and a declaration renouncing the doctrine of transubstantiation, preliminary conditions without which no temporal office of trust can be enjoyed. In this fundamental article of faith no compromise or equivocation would be admitted by any member of the

he would not put it to the Declaration of Indulgence, and was succeeded by Shaftesbury.

church of Rome. And, as the obligation extended to the highest ranks, this reached the end for which it was immediately designed; compelling not only the lord treasurer Clifford, the boldest and most dangerous of that party, to retire from public business, but the duke of York himself, whose desertion of the protestant church was hitherto not absolutely undisguised, to quit the post of lord admiral.

It is evident that a test might have been framed to exclude the Roman catholic as effectually as the present, without bearing like this on the protestant non-conformist. But, though the preamble of the bill, and the whole history of the transaction, show that the main object was a safeguard against popery, it is probable that a majority of both houses liked it the better for this secondary effect of shutting out the presbyterians still more than had been done by previous statutes of this reign. There took place, however, a remarkable coalition between the two parties; and many who had always acted as high-churchmen and cavaliers, sensible at last of the policy of their common adversaries, renounced a good deal of the intolerance and bigotry that had characterized the present parliament. The dissenters, with much prudence or laudable disinterestedness, gave their support to the test act. In return, a bill was brought in, and after some debate passed to the lords, repealing in a considerable degree the persecuting laws against their worship. The upper house, perhaps invidiously, returned it with amendments more favorable to the dissenters, and insisted upon them after a conference. A sudden prorogation very soon put an end to this bill, which was as unacceptable to the court as it was to the zealots of the church of England. It had been intended to follow it up by another, excluding all who should not conform to the established church from serving in the house of commons.

§ 46. It may appear remarkable that, as if content with these provisions, the victorious country party did not remonstrate against the shutting up of the exchequer, nor even wage any direct war against the king's advisers. But the test act, and their steady protestation against the suspending prerogative, crushed the projects and dispersed the members of the cabal. The king had no longer any minister on whom he could rely; and, with his indolent temper, seems from this time, if not to have abandoned all hope of declaring his change of religion, yet to have seen both that and his other favorite projects postponed without much reluctance. From a real predilection, from the prospect of gain,

and partly, no doubt, from some distant views of arbitrary power and a catholic establishment, he persevered a long time in clinging secretly to the interest of France; but his active co-operation in the schemes of 1669 was at an end. In the next session, of October, 1673, the commons drove Buckingham from the king's councils; they intimidated Arlington into a change of policy; and, though they did not succeed in removing the duke of Lauderdale, compelled him to confine himself chiefly to the affairs of Scotland.

CHAPTER XII.

§ 1. Earl of Danby's Administration. § 2. Opposition in the Commons. Frequently corrupt. § 3. Character of Lord Danby. § 4. Connection of the popular Party with France. Its Motives on both Sides. § 5. Doubt as to their Acceptance of Money. § 6. Secret Treaties of the King with France. § 7. Fall of Danby. His Impeachment. § 8. Questions arising on it. His Commitment to the Tower. § 9. Pardon pleaded in Bar. § 10. Votes of Bishops. § 11. Abatement of Impeachments by Dissolution. § 12. Popish Plot. Coleman's Letters. § 13. Godfrey's Death. § 14. Injustice of Judges on the Trials. § 15. Parliament dissolved. Exclusion of Duke of York proposed. § 16. Schemes of Shaftesbury and Monmouth. § 17. Unsteadiness of the King. § 18. Expedients to avoid the Exclusion. § 19. Names of Whig and Tory. § 20. New Council formed by Sir William Temple. Long Prorogation of Parliament. § 21. Petitions and Addresses. § 22. Violence of the Commons. Oxford Parliament. § 23. Impeachment of Commoners for Treason constitutional. Fitzharris impeached. § 24. Proceedings against Shaftesbury and his Colleagues. § 25. Triumph of the Court. § 26. Forfeiture of Charter of London, and of other places. § 27. Projects of Lord Russell and Sidney. § 28. Their Trials. § 29. High Tory Principles of the Clergy. Passive Obedience. Some contend for absolute Power. Filmer. Sir George Mackenzie. Decree of University of Oxford. § 30. Connection with Louis broken off. King's Death.

§ 1. THE period of Lord Danby's administration, from 1673 to 1678, was full of chicanery and dissimulation on the king's side, of increasing suspiciousness on that of the commons. Forced by the voice of parliament, and the bad success of his arms, into peace with Holland, Charles struggled hard against a co-operation with her in the great confederacy of Spain and the empire to resist the encroachments of France on the Netherlands. Such was in that age the strength of the barrier fortresses, and so heroic the resistance of the prince of Orange, that, notwithstanding the extreme weakness of Spain, there was no moment in that war when the sincere and strenuous intervention of England would not have compelled Louis XIV. to accept the terms of the treaty of Aix la Chapelle. It was the treacherous attachment of Charles II. to French interests that brought the long congress of Nimeguen to an unfortunate termination; and, by surrendering so many towns of Flanders as laid the rest open to future aggression, gave rise to the tedious struggles of two more wars.

§ 2. In the behavior of the house of commons during this period, previously at least to the session of 1678, there seems nothing which can incur much reprehension from those who reflect on the king's character and intentions, unless it be that they granted supplies rather too largely, and did not

sufficiently provide against the perils of the time. But the house of lords contained, unfortunately, an invincible majority for the court, ready to frustrate any legislative security for public liberty. Thus the habeas corpus act, first sent up to that house in 1674, was lost there in several successive sessions. The commons, therefore, testified their sense of public grievances, and kept alive an alarm in the nation, by resolutions and addresses, which a phlegmatic reader is sometimes too apt to consider as factious or unnecessary. If they seem to have dwelt more, in some of these, on the dangers of religion, and less on those of liberty, than we may now think reasonable, it is to be remembered that the fear of popery has always been the surest string to touch for effect on the people; and that the general clamor against that religion was all covertly directed against the duke of York, the most dangerous enemy of every part of our constitution. The real vice of this parliament was not intemperance, but corruption. Clifford, and still more Danby, were masters in an art practiced by ministers from the time of James I. (and which, indeed, can never be unknown where there exists a court and a popular assembly), that of turning to their use the weapons of mercenary eloquence by office, or blunting their edge by bribery. Some who had been once prominent in opposition, as sir Robert Howard and sir Richard Temple, became placemen; some, like Garraway and sir Thomas Lee, while they continued to lead the country party, took money from the court for softening particular votes; many, as seems to have been the case with Reresby, were won by promises and the pretended friendship of men in power. On two great classes of questions, France and popery, the commons broke away from all management; nor was Danby unwilling to let his master see their indocility on these subjects. But in general, till the year 1678, by dint of the means before mentioned, and partly, no doubt, through the honest conviction of many that the king was not likely to employ any minister more favorable to the protestant religion and liberties of Europe, he kept his ground without any insuperable opposition from parliament.

§ 3. The earl of Danby had virtues as an English minister, which served to extenuate some great errors and an entire want of scrupulousness in his conduct. Zealous against the church of Rome and the aggrandizement of France, he counteracted, while he seemed to yield to, the prepossessions of his master. If the policy of England before the peace of Nimeguen was mischievous and disgraceful, it would evi-

dently have been far more so had the king and duke of York been abetted by this minister in their fatal predilection for France. We owe to Danby's influence, it must ever be remembered, the marriage of princess Mary to the prince of Orange, the seed of the revolution and the act of settlement —a courageous and disinterested counsel, which ought not to have proved the source of his greatest misfortunes. But we can not pretend to say that he was altogether as sound a friend to the constitution of his country as to her national dignity and interests. I do not mean that he wished to render the king absolute. But a minister, harassed and attacked in parliament, is tempted to desire the means of crushing his opponents, or at least of augmenting his own sway. The mischievous bill that passed the house of lords in 1675, imposing as a test to be taken by both houses of parliament, as well as all holding beneficed offices, a declaration that resistance to persons commissioned by the king was in all cases unlawful, and that they would never attempt any alteration in the government in church or state, was promoted by Danby, though it might possibly originate with others. It was apparently meant as a bone of contention among the country party, in which presbyterians and old parliamentarians were associated with discontented cavaliers. Besides the mischief of weakening this party, which indeed the minister could not fairly be expected to feel, nothing could have been devised more unconstitutional, or more advantageous to the court's projects of arbitrary power.

It is certainly possible that a minister who, aware of the dangerous intentions of his sovereign or his colleagues, remains in the cabinet to thwart and countermine them, may serve the public more effectually than by retiring from office; but he will scarcely succeed in avoiding some material sacrifices of integrity, and still less of reputation. Danby, the ostensible adviser of Charles II., took on himself the just odium of that hollow and suspicious policy which appeared to the world. We know, indeed, that he was concerned, against his own judgment, in the king's secret receipt of money from France, the price of neutrality, both in 1676 and in 1678, the latter to his own ruin. Could the opposition, though not so well apprised of these transactions as we are, be censured for giving little credit to his assurances of zeal against that power; which, though sincere in him, were so little in unison with the disposition of the court? Had they no cause to dread that the great army suddenly raised in 1677, on pretense of being employed against France, might

be turned to some worse purposes more congenial to the king's temper?

§ 4. This invincible distrust of the court is the best apology for that which has given rise to so much censure—the secret connections formed by the leaders of opposition with Louis XIV., through his ambassadors Barillon and Rouvigny, about the spring of 1678. They well knew that the king's designs against their liberties had been planned in concert with France, and could hardly be rendered effectual without her aid in money, if not in arms. If they could draw over this dangerous ally from his side, and convince the king of France that it was not his interest to crush their power, they would at least frustrate the suspected conspiracy, and secure the disbanding of the army, though at a great sacrifice of the continental policy which they had long maintained, and which was truly important to our honor and safety. Yet there must be degrees in the scale of public utility; and, if the liberties of the people were really endangered by domestic treachery, it was ridiculous to think of saving Tournay and Valenciennes at the expense of all that was dearest at home. This is plainly the secret of that unaccountable, as it then seemed, and factious opposition, in the year 1678, which can not be denied to have served the ends of France, and thwarted the endeavors of lord Danby and sir William Temple to urge on the uncertain and half reluctant temper of the king into a decided course of policy. Louis, in fact, had no desire to see the king of England absolute over his people, unless it could be done so much by his own help as to render himself the real master of both. He had long been sensible of the advantage to be reaped from a malcontent party in England. In the first years after the restoration he kept up a connection with the disappointed commonwealth's men, while their courage was yet fresh and unsubdued; and in the war of 1665 was very nearly exciting insurrections both in England and Ireland. These schemes of course were suspended as he grew into closer friendship with Charles, and saw a surer method of preserving an ascendency over the kingdom. But as soon as the princess Mary's marriage, contrary to the king of England's promise, and to the plain intent of all their clandestine negotiations, displayed his faithless and uncertain character to the French cabinet, they determined to make the patriotism, the passion, and the corruption of the house of commons minister to their resentment and ambition.

The views of lord Hollis and lord Russell in this clandes-

tine intercourse with the French ambassador were sincerely patriotic and honorable: to detach France from the king; to crush the duke of York and popish faction; to procure the disbanding of the army, the dissolution of a corrupted parliament, the dismissal of a bad minister. They would, indeed, have displayed more prudence in leaving these dark and dangerous paths of intrigue to the court which was practiced in them. They were concerting measures with the natural enemy of their country, religion, honor, and liberty; whose obvious policy was to keep the kingdom disunited that it might be powerless; who had been long abetting the worst designs of our own court, and who could never be expected to act against popery and despotism but for the temporary ends of his ambition. Yet, in the very critical circumstances of that period, it was impossible to pursue any course with security; and the dangers of excessive circumspection and adherence to general rules may often be as formidable as those of temerity. The connection of the popular party with France may very probably have frustrated the sinister intentions of the king and duke, by compelling the reduction of the army, though at the price of a great sacrifice of European policy. Such may be, with unprejudiced men, a sufficient apology for the conduct of lord Russell and lord Hollis, the most public-spirited and high-minded characters of their age, in this extraordinary and unnatural alliance. It would have been unworthy of their virtue to have gone into so desperate an intrigue with no better aim than that of ruining lord Danby; and of this I think we may fully acquit them. The nobleness of Russell's disposition beams forth in all that Barillon has written of their conferences. Yet, notwithstanding the plausible grounds of his conduct, we can hardly avoid wishing that he had abstained from so dangerous an intercourse, which led him to impair, in the eyes of posterity, by something more like faction than can be ascribed to any other part of his parliamentary life, the consistency and ingenuousness of his character.

§ 5. I have purposely mentioned lord Russell and lord Hollis apart from others who were mingled in the same intrigues of the French ambassador, both because they were among the first with whom he tampered, and because they are honorably distinguished by their abstinence from all pecuniary remuneration, which Hollis refused, and which Barillon did not presume to offer to Russell. It appears, however, from this minister's accounts of the money he had expended in this secret service of the French crown, that, at a

later time, namely, about the end of 1680, many of the leading members of opposition, sir Thomas Littleton, Mr. Garraway, Mr. Hampden, Mr. Powle, Mr. Sacheverell, Mr. Foley, received sums of 500 or 300 guineas, as testimonies of the king of France's munificence and favor. Among others, Algernon Sidney, who, though not in Parliament, was very active out of it, is more than once mentioned. Chiefly because the name of Algernon Sidney had been associated with the most stern and elevated virtue, this statement was received with great reluctance; and many have ventured to call the truth of these pecuniary gratifications in question. This is certainly a bold surmise; though Barillon is known to have been a man of luxurious and expensive habits, and his demands for more money on account of the English court, which continually occur in his correspondence with Louis, may lead to a suspicion that he would be in some measure a gainer by it. This, however, might possibly be the case without actual peculation. But it must be observed that there are two classes of those who are alleged to have received presents through his hands: one, of such as were in actual communication with himself; another, of such as sir John Baber, a secret agent, had prevailed upon to accept it. Sidney was in the first class; but as to the second, comprehending Littleton, Hampden, Sacheverell, in whom it is, for different reasons, as difficult to suspect pecuniary corruption as in him, the proof is manifestly weaker, depending only on the assertion of an intriguer that he had paid them the money. The falsehood either of Baber or Barillon would acquit these considerable men. Nor is it to be reckoned improbable that persons employed in this clandestine service should be guilty of a fraud, for which they could evidently never be made responsible. We have, indeed, a remarkable confession of Coleman, the famous intriguer executed for the popish plot, to this effect. He deposed, in his examination before the house of commons, in November, 1678, that he had received last session from Barillon £2500 to be distributed among members of parliament, which he had converted to his own use. It is doubtless possible that Coleman, having actually expended this money in the manner intended, bespoke the favor of those whose secret he kept by taking the discredit of such a fraud on himself. But it is also possible that he spoke the truth. A similar uncertainty hangs over the transactions of sir John Baber. Nothing in the parliamentary conduct of the above-mentioned gentleman in 1680 corroborates the suspicion of an intrigue with France, whatever may have been the case in 1678.

I must fairly confess, however, that the decided bias of my own mind is on the affirmative side of this question, and that principally because I am not so much struck as some have been by any violent improbability in what Barillon wrote to his court on the subject. If, indeed, we were to read that Algernon Sidney had been bought over by Louis XIV. or Charles II. to assist in setting up absolute monarchy in England, we might fairly oppose our knowledge of his inflexible and haughty character, of his zeal, in life and death, for republican liberty. But there is, I presume, some moral distinction between the acceptance of a bribe to desert or betray our principles, and that of a trifling present for acting in conformity to them. The one is, of course, to be styled corruption; the other is repugnant to a generous and delicate mind, but too much sanctioned by the practice of an age far less scrupulous than our own, to have carried with it any great self-reproach or sense of degradation. It is truly inconceivable that men of such property as sir Thomas Littleton or Mr. Foley should have accepted 300 or 500 guineas, the sums mentioned by Barillon, as the price of apostasy from those political principles to which they owed the esteem of their country, or of an implicit compliance with the dictates of France. It is sufficiently discreditable to the times in which they lived that they should have accepted so pitiful a gratuity; unless indeed we should in candor resort to an hypothesis which seems not absurd, that they agreed among themselves not to offend Louis, or excite his distrust, by a refusal of this money. Sidney indeed was, as there is reason to think, a distressed man; he had formerly been in connection with the court of France, and had persuaded himself that the countenance of that power might one day or other be afforded to his darling scheme of a commonwealth; he had contracted a dislike to the prince of Orange, and consequently to the Dutch alliance, from the same governing motive: is it strange that one so circumstanced should have accepted a small gratification from the king of France which implied no dereliction of his duty as an Englishman, or any sacrifice of political integrity? And I should be glad to be informed by the idolaters of Algernon Sidney's name, what we know of him from authentic and contemporary sources which renders this incredible.

§ 6. France, in the whole course of these intrigues, held the game in her hands. Mistress of both parties, she might either embarrass the king through parliament, if he pretended to an independent course of policy, or cast away the latter

when he should return to his former engagements. Hence, as early as May, 1678, a private treaty was set on foot between Charles and Louis, by which the former obliged himself to keep a neutrality, if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband most of his army, and not to assemble his parliament for six months: in return, he was to receive 6,000,000 livres. This was signed by the king himself on May 27, none of his ministers venturing to affix their names. Yet at this time he was making outward professions of an intention to carry on the war. Even in this secret treaty, so thorough was his insincerity, he meant to evade one of its articles, that of disbanding his troops. In this alone he was really opposed to the wishes of France; and her pertinacity in disarming him seems to have been the chief source of those capricious changes of his disposition which we find for three or four years at this period.[1] Louis again appears not only to have mistrusted the king's own inclinations after the prince of Orange's marriage, and his ability to withstand the eagerness of the nation for war, but to have apprehended that he might become absolute by means of his army, without standing indebted for it to his ancient ally. In this point, therefore, he faithfully served the popular party. Charles used every endeavor to evade this condition; whether it were that he still entertained hopes of obtaining arbitrary power through intimidation, or that, dreading the violence of the house of commons, and ascribing it rather to a republican conspiracy than to his own misconduct, he looked to a military force as his security. From this motive we may account for his strange proposal to the French king of a league in support of Sweden, by which he was to furnish fifteen ships and 10,000 men, at the expense of France, during three years, receiving six millions for the first year, and four for each of the next two. Louis, as is highly probable, betrayed this project to the Dutch government, and thus frightened them into that hasty signature of the treaty of Nimeguen, which broke up the confederacy, and accomplished the immediate objects of his ambition. No longer in need of the court of England, he determined to punish it for that duplicity which none resent more in others than those who are accustomed to practice it. He refused Charles the pension

[1] His exclamation at Barillon's pressing the reduction of the army to 8000 men is well known. "God's fish! are all the king of France's promises to make me master of my subjects come to this? or does he think that a matter to be done with 8000 men?"

stipulated by the private treaty, alleging that its conditions had not been performed; and urged on Montagu, with promises of indemnification, to betray as much as he knew of that secret, in order to ruin lord Danby.

§ 7. The ultimate cause of this minister's fall may thus be deduced from the best action of his life, though it ensued immediately from his very culpable weakness in aiding the king's inclinations toward a sordid bargaining with France. It is well known that the famous letter to Montagu, empowering him to make an offer of neutrality for the price of 6,000,000 livres, was not only written by the king's express order, but that Charles attested this with his own signature in a postscript. This bears date five days after an act had absolutely passed to raise money for carrying on the war: a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozener as filled the throne. But, as he was beyond their reach, they exercised a constitutional right in the impeachment of his responsible minister. For responsible he surely was; though, strangely mistaking the obligations of an English statesman, Danby seems to fancy in his printed defense that the king's order would be sufficient warrant to justify obedience in any case not literally unlawful. The letter to Montagu, he asserts, "was written by the king's command, upon the subject of peace and war, wherein his majesty alone is at all times sole judge, and ought to be obeyed not only by any of his ministers of state, but by all his subjects." Such were, in that age, the monarchical or tory maxims of government, which the impeachment of this minister contributed in some measure to overthrow. As the king's authority for the letter to Montagu was an undeniable fact, evidenced by his own handwriting, the commons, in impeaching lord Danby, went a great way toward establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is considered, in the modern theory of the constitution, answerable for the justice, the honesty, the utility of all measures emanating from the crown, as well as for their legality; and thus the executive administration is rendered subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of parliament. It must at the same time be admitted that, through the heat of honest indignation and some less worthy

passions on the one hand, through uncertain and crude principles of constitutional law on the other, this just and necessary impeachment of the earl of Danby was not so conducted as to be exempt from all reproach. The charge of high treason for an offense manifestly amounting only to misdemeanor, with the purpose, not perhaps of taking the life of the accused, but at least of procuring some punishment beyond the law, with the strange mixture of articles, as to which there was no presumptive proof, or which were evidently false, such as concealment of the popish plot, gave such a character of intemperance and faction to these proceedings as may lead superficial readers to condemn them altogether. The compliance of Danby with the king's corrupt policy had been highly culpable, but it was not unprecedented; it was even conformable to the court standard of duty; and as it sprang from too inordinate a desire to retain power, it would have found an appropriate and adequate chastisement in exclusion from office. We judge perhaps somewhat more favorably of lord Danby than his contemporaries at that juncture were warranted to do; but even then he was rather a minister to be pulled down than a man to be severely punished. His one great and undeniable service to the protestant and English interests should have palliated a multitude of errors. Yet this was the mainspring and first source of the intrigue that ruined him.

§ 8. The impeachment of lord Danby brought forward several material discussions on that part of our constitutional law which should not be passed over in this place. 1. As soon as the charges presented by the commons at the bar of the upper house had been read, a motion was made that the earl should withdraw; and another afterward that he should be committed to the Tower: both of which were negatived by considerable majorities. This refusal to commit on a charge of treason had created a dispute between the two houses in the instance of lord Clarendon. In that case, however, one of the articles of impeachment did actually contain an unquestionable treason. But it was contended with much more force on the present occasion, that if the commons, by merely using the word traitorously, could alter the character of offenses which, on their own showing, amounted but to misdemeanors, the boasted certainty of the law in matters of treason would be at an end; and, unless it were meant that the lords should pass sentence in such a case against the received rules of law, there could be no pretext for their refusal to admit the accused to bail. The

house of commons, however, may be considered as having carried their point; for, though the prorogation and subsequent dissolution of the present parliament ensued so quickly that nothing more was done in the matter, yet, when the next house of commons revived the impeachment, the lords voted to take Danby into custody without any further objection. It ought not to be inferred from hence that they were wrong in refusing to commit; nor do I conceive, notwithstanding the latter precedent of lord Oxford, that any rule to the contrary is established. In any future case it ought to be open to debate whether articles of impeachment pretending to contain a charge of high treason do substantially set forth overt acts of such a crime; and if the house of lords shall be of opinion, either by consulting the judges or otherwise, that no treason is specially alleged, they should, notwithstanding any technical words, treat the offense as a misdemeanor, and admit the accused to bail.

§ 9.—2. A still more important question arose as to the king's right of pardon upon a parliamentary impeachment. Danby, who had absconded on the unexpected revival of these proceedings in the new parliament, finding that an act of attainder was likely to pass against him in consequence of his flight from justice, surrendered himself to the usher of the black rod; and, on being required to give in his written answer to the charges of the commons, pleaded a pardon secretly obtained from the king, in bar of the prosecution. The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England. They demanded judgment at the lord's bar against Danby, as having put in a void plea. They resolved, with that culpable violence which distinguished this and the succeeding house of commons, in order to deprive the accused of the assistance of counsel, that no commoner whatsoever should presume to maintain the validity of the pardon pleaded by the earl of Danby without their consent, on pain of being accounted a betrayer of the liberties of the commons of England. They denied the right of the bishops to vote on the validity of this pardon. They demanded the appointment of a committee from both houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot. The upper house gave some signs of a vacillating and temporizing spirit, not by any means unaccountable. They acceded, after a first refusal, to the proposition of a committee, though manifestly designed

to encroach on their own exclusive claim of judicature. But they came to a resolution that the spiritual lords had a right to sit and vote in parliament in capital cases, until judgment of death shall be pronounced. The commons of course protested against this vote; but a prorogation soon dropped the curtain over their differences; and Danby's impeachment was not acted upon in the next parliament.

§ 10. There seems to be no kind of pretense for objecting to the votes of the bishops on such preliminary questions as may arise in an impeachment of treason. It is true that ancient custom has so far ingrafted the provisions of the ecclesiastical law on our constitution that they are bound to withdraw when judgment of life or death is pronounced, though even in this they always did it with a protestation of their right to remain. This, once claimed as a privilege of the church, and reluctantly admitted by the state, became, in the lapse of ages, an exclusion and a badge of inferiority. In the constitutions of Clarendon, under Henry II., it is enacted, that the bishops and others holding spiritual benefices "in capite" should give their attendance at trials in parliament till it come to sentence of life or member. This, although perhaps too ancient to have authority as statute law, was a sufficient evidence of the constitutional usage, where nothing so material could be alleged on the other side. And, as the original privilege was built upon nothing better than the narrow superstitions of the canon law, there was no reasonable pretext for carrying the exclusion of the spiritual lords further than certain and constant precedents required. Though it was true, as the enemies of lord Danby urged, that by voting for the validity of his pardon they would in effect determine the whole question in his favor, yet there seemed no serious reason, considering it abstractedly from party views, why they should not thus indirectly be restored for once to a privilege from which the prejudices of former ages alone had shut them out.

The main point in controversy, whether a general or special pardon from the king could be pleaded in answer to an impeachment of the commons, so as to prevent any further proceedings in it, never came to a regular decision. It was evident that a minister who had influence enough to obtain such an indemnity might set both houses of parliament at defiance; the pretended responsibility of the crown's advisers, accounted the palladium of our constitution, would be an idle mockery, if not only punishment could be averted but inquiry frustrated. Even if the king could remit the pen-

alties of a guilty minister's sentence upon impeachment, it would be much that public indignation should have been excited against him, that suspicion should have been turned into proof, that shame and reproach, irremissible by the great seal, should avenge the wrongs of his country. It was always to be presumed that a sovereign, undeceived by such a judicial inquiry, or sensible to the general voice it roused, would voluntarily, or at least prudently, abandon an unworthy favorite. Though it might be admitted that long usage had established the royal prerogative of granting pardons under the great seal, even before trial, and that such pardons might be pleaded in bar (a prerogative, indeed, which ancient statutes, not repealed, though gone into disuse, or rather in no time acted upon, had attempted to restrain), yet we could not infer that it extended to cases of impeachment. In ordinary criminal proceedings by indictment the king was before the court as prosecutor, the suit was in his name; he might stay the process at his pleasure by entering a "nolle prosequi;" to pardon, before or after judgment, was a branch of the same prerogative; it was a great constitutional trust, to be exercised at his discretion. But in an appeal—that is, an accusation of felony, brought by the injured party or his next of blood, a proceeding wherein the king's name did not appear—it was undoubted that he could not remit the capital sentence. The same principle seemed applicable to an impeachment at the suit of the commons of England, demanding justice from the supreme tribunal of the other house of parliament. It could not be denied that James had remitted the whole sentence upon lord Bacon. But impeachments were so unusual at that time, and the privileges of parliament so little out of dispute, that no great stress could be laid on this precedent.

Such must have been the course of arguing, strong on political, and specious on legal grounds, which induced the commons to resist the plea put in by lord Danby. Though this question remained in suspense on the present occasion, it was finally decided by the legislature in the act of settlement, which provides that no pardon under the great seal of England be pleadable to an impeachment of the commons in parliament. These expressions seem tacitly to concede the crown's right of granting a pardon after sentence, which, though perhaps it could not well be distinguished in point of law from a pardon pleadable in bar, stands on a very different footing, as has been observed above, with respect to constitutional policy. Accordingly, upon the impeachment

of the six peers who had been concerned in the rebellion of 1715, the house of lords, after sentence passed, having come to a resolution on debate that the king had a right to reprieve in cases of impeachment, addressed him to exercise that prerogative as to such of them as should deserve his mercy; and three of the number were in consequence pardoned.

§ 11.—3. The impeachment of Danby first brought forward another question of hardly less magnitude, and remarkable as one of the few great points in constitutional law which have been discussed and finally settled within the memory of the present generation: I mean the continuance of an impeachment by the commons from one parliament to another. Though this has been put at rest by a determination altogether consonant to maxims of expediency, it seems proper, in this place, to show briefly the grounds upon which the argument on both sides rested.

In the earlier period of our parliamentary records the business of both houses, whether of a legislative or judicial nature, though often very multifarious, was dispatched with the rapidity natural to comparatively rude times, by men impatient of delay, unused to doubt, and not cautious in the proof of facts or attentive to the subtleties of reasoning. The session, generally speaking, was not to terminate till the petitions in parliament for redress had been disposed of, whether decisively or by reference to some more permanent tribunal. Petitions for alteration of the law, presented by the commons, and assented to by the lords, were drawn up into statutes by the king's council just before the prorogation or dissolution. They fell naturally to the ground if the session closed before they could be submitted to the king's pleasure. The great change that took place in the reign of Henry VI., by passing bills complete in their form through the two houses instead of petitions, while it rendered manifest to every eye that distinction between legislative and judicial proceedings which the simplicity of olden times had half concealed, did not affect this constitutional principle. At the close of a session every bill then in progress through parliament became a nullity, and must pass again through all its stages before it could be tendered for the royal assent. No sort of difference existed in the effect of a prorogation and a dissolution; it was even maintained that a session made a parliament.

During the fifteenth and sixteenth centuries writs of error from inferior courts to the house of lords became far less usual than in the preceding age; and when they occurred, as

error could only be assigned on a point of law appearing on the record, they were quickly decided with the assistance of the judges. But, when they grew more frequent, and especially when appeals from the chancellor, requiring often a tedious examination of depositions, were brought before the lords, it was found that a sudden prorogation might often interrupt a decision; and the question arose whether writs of error, and other proceedings of a similar nature, did not, according to precedent or analogy, cease, or, in technical language, abate, at the close of a session. An order was accordingly made by the house on March 11, 1673, that "the lords' committees for privileges should inquire whether an appeal to this house, either by writ of error or petition, from the proceedings of any other court being depending, and not determined in one session of parliament, continue in statu quo unto the next session of parliament, without renewing the writ of error or petition, or beginning all anew." The committee reported on the 29th of March, after misreciting the order of reference to them in a very remarkable manner, by omitting some words and interpolating others, so as to make it far more extensive than it really was, that upon the consideration of precedents, which they specify, they came to a resolution that "businesses depending in one parliament or session of parliament have been continued to the next session of the same parliament, and the proceedings thereupon have remained in the same state in which they were left when last in agitation." The house approved of this resolution, and ordered it accordingly.

This resolution was decisive as to the continuance of ordinary judicial business beyond the termination of a session. It was still open to dispute whether it might not abate by a dissolution; and the peculiar case of impeachment to which, after the dissolution of the long parliament in 1678, every one's attention was turned, seemed to stand on different grounds. It was referred, therefore, to the committee of privileges, on the 11th of March, 1679, to consider whether petitions of appeal which were presented to this house in the last parliament be still in force to be proceeded on. Next day it is referred to the same committee, on a report of the matter of fact as to the impeachments of the earl of Danby and the five popish lords in the late parliament, to consider of the state of the said impeachments and all the incidents relating thereto, and to report to the house. On the 18th of March lord Essex reported from the committee that, "upon perusal of the judgment of this house of the 29th of March,

1673, they are of opinion that in all cases of appeals and writs of error they continue, and are to be proceeded on, in statu quo, as they stood at the dissolution of the last parliament, without beginning de novo. . . . . And, upon consideration had of the matter referred to their lordships concerning the state of the impeachments brought up from the house of commons the last parliament, etc. . . . . they are of opinion that the dissolution of the last parliament doth not alter the state of the impeachments brought up by the commons in that parliament." This report was taken into consideration next day by the house; and after a debate, after the previous question had been moved and lost, it was resolved to agree with the committee.

This resolution became for some years the acknowledged law of parliament. But in the parliament of 1685, the impeached lords having petitioned the house, it was resolved that the order of the 19th of March, 1679, be reversed and annulled as to impeachments; and they were consequently released from their recognizances.

The first of these two contradictory determinations is not certainly free from that reproach which so often contaminates our precedents of parliamentary law, and renders an honest man reluctant to show them any greater deference than is strictly necessary. It passed during the violent times of the popish plot; and a contrary resolution would have set at liberty the five catholic peers committed to the Tower, and enabled them probably to quit the kingdom before a new impeachment could be preferred. It must be acknowledged, at the same time, that it was borne out in a considerable degree by the terms of the order of 1673, which seems liable to no suspicion of answering a temporary purpose; and that the court party in the house of lords were powerful enough to have withstood any flagrant innovation in the law of parliament. As for the second resolution, that of 1685, which reversed the former, it was passed in the very worst of times; and, if we may believe the protest signed by the earl of Anglesea and three other peers, with great precipitation and neglect of usual forms. It was not, however, annulled after the revolution; but, on the contrary, received what may seem at first sight a certain degree of confirmation from an order of the house of lords in 1690, on the petitions of lords Salisbury and Peterborough, who had been impeached in the preceding parliament, to be discharged; which was done, after reading the resolutions of 1679 and 1685, and a long debate thereon. But as a general pardon had come out

in the mean time, by which the judges held that the offenses imputed to these two lords had been discharged, and as the commons showed no disposition to follow up their impeachment against them, no parliamentary reasoning can perhaps be founded on this precedent. In the case of the duke of Leeds, impeached by the commons in 1695, no further proceedings were had; but the lords did not make an order for his discharge from the accusation till five years after three dissolutions had intervened, and grounded it upon the commons not proceeding with the impeachment. They did not, however, send a message to inquire if the commons were ready to proceed, which, according to parliamentary usage, would be required in case of a pending impeachment. The cases of lords Somers, Oxford, and Halifax were similar to that of the duke of Leeds, except that so long a period did not intervene. These instances, therefore, rather tend to confirm the position that impeachments did not ipso facto abate by a dissolution, notwithstanding the reversal of the order of 1679. In the case of the earl of Oxford, it was formally resolved in 1717 that an impeachment does not determine by a prorogation of parliament; an authority conclusive to those who maintain that no difference exists in the law of parliament between the effects of a prorogation and a dissolution. But it is difficult to make all men consider this satisfactory.

The question came finally before both houses of parliament in 1791, a dissolution having intervened during the impeachment of Mr. Hastings; an impeachment which, far unlike the rapid proceedings of former ages, had already been for three years before the house of lords, and seemed likely to run on to an almost interminable length. It must have been abandoned in despair if the prosecution had been held to determine by the late dissolution. The general reasonings, and the force of precedents on both sides, were urged with great ability, and by the principal speakers in both houses; the lawyers generally inclining to maintain the resolution of 1685, that impeachments abate by a dissolution, but against still greater names which were united on the opposite side. In the end, after an ample discussion, the continuance of impeachments, in spite of a dissolution, was carried by very large majorities; and this decision, so deliberately taken, and so free from all suspicion of partiality (the majority in neither house, especially the upper, bearing any prejudice against the accused person), as well as so consonant to principles of utility and constitutional policy, must forever have set at rest all dispute upon the question.

§ 12. The year 1678, and the last session of the parliament that had continued since 1661, were memorable for the great national delusion of the POPISH PLOT. For national it was undoubtedly to be called, and by no means confined to the whig or opposition party, either in or out of parliament, though it gave them much temporary strength. And though it was a most unhappy instance of the credulity begotten by heated passions and mistaken reasoning, yet there were circumstances, and some of them very singular in their nature, which explain and furnish an apology for the public error, and which it is more important to point out and keep in mind, than to inveigh, as is the custom in modern times, against the factiousness and bigotry of our ancestors. For I am persuaded that we are far from being secure from similar public delusions, whenever such a concurrence of coincidences and seeming probabilities shall again arise as misled nearly the whole people of England in the popish plot.

It is first to be remembered that there was really and truly a popish plot in being, though not that which Titus Oates and his associates pretended to reveal. In this plot the king, the duke of York, and the king of France were chief conspirators; the Romish priests, and especially the Jesuits, were eager co-operators. Their machinations and their hopes, long suspected, and in a general sense known, were divulged by the seizure and publication of Coleman's letters. "We have here," he says, in one of these, "a mighty work upon our hands, no less than the conversion of three kingdoms, and by that, perhaps, the utter subduing of a pestilent heresy, which has a long time domineered over this northern world. There were never such hopes since the death of our queen Mary as now in our days. God hath given us a prince who is become (I may say by miracle) zealous of being the author and instrument of so glorious a work; but the opposition we are sure to meet with is also like to be great, so that it imports us to get all the aid and assistance we can." These letters were addressed to father la Chaise, confessor of Louis XIV., and displayed an intimate connection with France for the great purpose of restoring popery. They came to light at the very period of Oates's discovery; and, though not giving it much real confirmation, could hardly fail to make a powerful impression on men unaccustomed to estimate the value and bearings of evidence.[2]

[2] Scroggs tried Coleman with much rudeness and partiality; but his summing up, in reference to the famous passage in the letters, is not deficient in acuteness. In fact, this not only convicted Coleman, but raised a general conviction of the truth of a plot—and a plot there was, though not Oates's.

The conspiracy supposed to have been concerted by the Jesuits at St. Omer, and in which so many English catholics were implicated, chiefly consisted, as is well known, in a scheme of assassinating the king. Though the obvious falsehood and absurdity of much that the witnesses deposed in relation to this plot render it absolutely incredible, and fully acquit those unfortunate victims of iniquity and prejudice, it could not appear at the time an extravagant supposition that an eager intriguing faction should have considered the king's life a serious obstacle to their hopes. Though as much attached in heart as his nature would permit to the catholic religion, he was evidently not inclined to take any effectual measures in its favor; he was but one year older than his brother, on the contingency of whose succession all their hopes rested, since his heiress was not only brought up in the protestant faith, but united to its most strenuous defender. Nothing could have been more anxiously wished at St. Omer than the death of Charles; and it does not seem improbable that the atrocious fictions of Oates may have been originally suggested by some actual, though vague, projects of assassination, which he had heard in discourse among the ardent spirits of that college.

§ 13. The popular ferment which this tale, however undeserving of credit, excited in a predisposed multitude, was naturally wrought to a higher pitch by the very extraordinary circumstances of sir Edmondbury Godfrey's death. Even at this time, although we reject the imputation thrown on the catholics, and especially on those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North,[3] but has not the slightest corroboration from any evidence, nor does it seem to have been suggested by the contemporary libelers of the court party. That he might have had, as an active magistrate, private enemies, whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered; nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting

[3] Examen, p. 196.

the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck; and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence on that occasion was strongly to confirm the supposition that he had perished by the hands of assassins. His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at the time it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates—a circumstance not in itself highly important—but was supposed to have received the confidential communications of Coleman.[4]

Another circumstance, much calculated to persuade ordinary minds of the truth of the plot, was the trial of Reading, a Romish attorney, for tampering with the witnesses against the accused catholic peers, in order to make them keep out of the way. As such clandestine dealing with witnesses creates a strong, and perhaps with some too strong a presumption of guilt, where justice is sure to be uprightly administered, men did not make a fair distinction as to times when the violence of the court and jury gave no reasonable hope of escape, and when the most innocent party would much rather procure the absence of a perjured witness than trust to the chance of disproving his testimony.

§ 14. There was, indeed, good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The "State Trials," none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial.

It is remarkable that, although the king might be justly

[4] It was deposed by a respectable witness that Godfrey entertained apprehensions on account of what he had done as to the plot, and had said, "On my conscience, I believe I shall be the first martyr."—State Trials, vii., 168. These little additional circumstances, which are suppressed by later historians, who speak of the plot as unfit to impose on any but the most bigoted fanatics, contributed to make up a body of presumptive and positive evidence from which human belief is rarely withheld.

surmised to give little credence to the pretended plot, and the duke of York was manifestly affected in his interests by the heats it excited, yet the judges most subservient to the court—Scroggs, North, Jones—went with all violence into the popular cry, till, the witnesses beginning to attack the queen and to menace the duke, they found it was time to rein in, as far as they could, the passions they had instigated.[5] Pemberton, a more honest man in political matters, showed a remarkable intemperance and unfairness in all trials relating to popery. Even in that of lord Stafford in 1680, the last, and perhaps the worst, proceeding under this delusion, though the court had a standing majority in the house of lords, he was convicted by fifty-five peers against thirty-one; the earl of Nottingham, lord chancellor, the duke of Lauderdale, and several others of the administration, voting him guilty, while he was acquitted by the honest Hollis and the acute Halifax. So far was the belief in the popish plot, or the eagerness in hunting its victims to death, from being confined to the whig faction, as some writers have been willing to insinuate. None had more contributed to raise the national outcry against the accused, and create a firm persuasion of the reality of the plot, than the clergy in their sermons, even the most respectable of their order—Sancroft, Sharp, Barlow, Burnet, Tillotson, Stillingfleet; inferring its truth from Godfrey's murder or Coleman's letter, calling for the severest laws against catholics, and imputing to them the fire of London, nay, even the death of Charles I.

§ 15. Though the duke of York was not charged with participation in the darkest schemes of the popish conspirators, it was evident that his succession was the great aim of their endeavors, and evident also that he had been engaged in the more real and undeniable intrigues of Coleman. His accession to the throne, long viewed with just apprehension, now seemed to threaten such perils to every part of the constitution as ought not supinely to be waited for, if any means could be devised to obviate them. This gave rise to the bold measure of the exclusion bill, too bold, indeed, for the spirit of the country, and the rock on which English liberty was nearly shipwrecked. In the long parliament, full as it was of pensioners and creatures of court influence, nothing so vigorous would have been successful. Even in the bill

[5] The moment when the judges veered round was on the trial of Sir George Wakeman, physician to the queen. Scroggs, who had been infamously partial against the prisoners upon every former occasion, now treated Oates and Bedloe as they deserved, though to the aggravation of his own disgrace.

which excluded catholic peers from sitting in the house of lords, a proviso, exempting the duke of York from its operation, having been sent down from the other house, passed by a majority of two voices. But the zeal they showed against Danby induced the king to put an end to this parliament of seventeen years' duration—an event long ardently desired by the popular party, who foresaw their ascendency in the new elections. The next house of commons accordingly came together with an ardor not yet quenched by corruption; and after reviving the impeachments commenced by their predecessors, and carrying a measure long in agitation, a test[6] which shut the catholic peers out of parliament, went upon the exclusion bill. Their dissolution put a stop to this, and in the next parliament the lords rejected it.[7]

The right of excluding an unworthy heir from the succession was supported not only by the plain and fundamental principles of civil society, which establish the interest of the people to be the paramount object of political institutions, but by those of the English constitution. It had always been the better opinion among lawyers that the reigning king, with consent of parliament, was competent to make any changes in the inheritance of the crown; and this, besides the acts passed under Henry VIII. empowering him to name his successor, was expressly enacted, with heavy penalties against such as should contradict it, in the thirteenth year of Elizabeth. The contrary doctrine, indeed, if pressed to its legitimate consequences, would have shaken all the statutes that limit the prerogative; since, if the analogy of entails in private inheritances were to be resorted to, and the existing legislature should be supposed incompetent to alter the line of succession, they could as little impair as they could alienate the indefeasible rights of the heir; nor could he be bound by restrictions to which he had never given his assent. It seemed strange to maintain that the parliament could reduce a future king of England to the condition of a doge of Venice by shackling and taking away his authority, and yet could not divest him of a title which they could render little better than a mockery. Those accordingly who disputed the legislative omnipotence of par-

[6] This test (30 Car. II., stat. 2) was the declaration subscribed by members of both houses of parliament on taking their seats, that there is no transubstantiation of the elements in the Lord's Supper; and that the invocation of saints, as practiced in the church of Rome, is idolatrous. The oath of supremacy was already taken by the commons, though not by the lords; and it is a great mistake to imagine that catholics were legally capable of sitting in the lower house before the act of 1679.

[7] The second reading of the exclusion bill was carried, May 21, 1679, by 207 to 128. In the next parliament it was carried without a division.

liament did not hesitate to assert that statutes infringing the prerogative were null of themselves. With the court lawyers conspired the clergy, who pretended these matters of high policy and constitutional law to be within their province, and, with hardly an exception, took a zealous part against the exclusion. It was, indeed, a measure repugnant to the common prejudices of mankind, who, without entering on the abstract competency of parliament, are naturally accustomed in an hereditary monarchy to consider the next heir as possessed of a right, of which, except through necessity or notorious criminality, he can not be justly divested. The mere profession of a religion different from the established does not seem, abstractly considered, an adequate ground for unsettling the regular order of inheritance. But the Romish religion was in that age of so restless and malignant a character, that, unless the power of the crown should be far more strictly limited than had hitherto been the case, there must be a very serious danger from any sovereign of that faith; and the letters of Coleman, as well as other evidences, made it manifest that the duke of York was engaged in a scheme of general conversion, which, from his arbitrary temper, and the impossibility of succeeding by fair means, it was just to apprehend, must involve the subversion of all civil liberty. Still this was not distinctly perceived by persons at a distance from the scene, imbued, as most of the gentry were, with the principles of the old cavaliers and those which the church had inculcated. The king, though hated by the dissenters, retained much of the affections of that party, who forgave the vices they deplored, to his father's memory and his personal affability. It appeared harsh and disloyal to force his consent to the exclusion of a brother in whom he saw no crime, and to avoid which he offered every possible expedient. There will always be found in the people of England a strong unwillingness to force the reluctance of their sovereign—a latent feeling, of which parties in the heat of their triumphs are seldom aware, because it does not display itself until the moment of reaction. And although, in the less settled times before the revolution, this personal loyalty was highly dangerous, and may still, no doubt, sometimes break out so as to frustrate objects of high import to the public weal, it is, on the whole, a salutary temper for the conservation of the monarchy, which may require such a barrier against the encroachments of factions and the fervid passions of the multitude.

§ 16. The bill of exclusion was drawn with as much regard

to the inheritance of the duke of York's daughters as they could reasonably demand, or as any lawyer engaged for them could have shown; though something different seems to be insinuated by Burnet. It provided that the imperial crown of England should descend to and be enjoyed by such person or persons successively during the life of the duke of York as should have inherited or enjoyed the same in case he were naturally dead. If the princess of Orange was not expressly named (which, the bishop tells us, gave a jealousy, as though it were intended to keep that matter still undetermined), this silence was evidently justified by the possible contingency of the birth of a son to the duke, whose right there was no intention in the framers of the bill to defeat. But a large part of the opposition had unfortunately other objects in view. It had been the great error of those who withstood the arbitrary counsels of Charles II. to have admitted into their closest confidence, and in a considerable degree to the management of their party, a man so destitute of all honest principle as the earl of Shaftesbury. Under his contaminating influence their passions became more intractable, their connections more seditious and democratical, their schemes more revolutionary; and they broke away more and more from the line of national opinion, till a fatal reaction involved themselves in ruin, and exposed the cause of public liberty to its most imminent peril. The countenance and support of Shaftesbury brought forward that unconstitutional and most impolitic scheme of the duke of Monmouth's succession. There could hardly be a greater insult to a nation used to respect its hereditary line of kings than to set up the bastard of a prostitute, without the least pretense of personal excellence or public services, against a princess of known virtue and attachment to the protestant religion. And the effrontery of this attempt was aggravated by the libels eagerly circulated to dupe the credulous populace into a belief of Monmouth's legitimacy. The weak young man, lured on to destruction by the arts of intriguers and the applause of the multitude, gave just offense to sober-minded patriots, who knew where the true hopes of public liberty were anchored, by a kind of triumphal procession through parts of the country, and by other indications of a presumptuous ambition.

§ 17. If any apology can be made for the encouragement given by some of the whig party (for it was by no means general) to the pretensions of Monmouth, it must be found in their knowledge of the king's affection for him, which

furnished a hope that he might more easily be brought in to the exclusion of his brother for the sake of so beloved a child than for the prince of Orange. And doubtless there was a period when Charles's acquiescence in the exclusion did not appear so unattainable as, from his subsequent line of behavior, we are apt to consider it. It appears from the recently published life of James that, in the autumn of 1680, the embarrassment of the king's situation, and the influence of the duchess of Portsmouth, who had gone over to the exclusionists, made him seriously deliberate on abandoning his brother. Whether from natural instability of judgment, from the steady adherence of France to the duke of York, or from observing the great strength of the tory party in the house of lords, where the bill was rejected by a majority of 63 to 30, he soon returned to his former disposition. It was long, however, before he treated James with perfect cordiality. Conscious of his own insincerity in religion, which the duke's bold avowal of an obnoxious creed seemed to reproach, he was provoked at bearing so much of the odium and incurring so many of the difficulties which attended a profession that he had not ventured to make.

In the apprehensions excited by the king's unsteadiness and the defection of the duchess of Portsmouth, the duke deemed his fortunes so much in jeopardy as to have resolved on exciting a civil war, rather than yield to the exclusion. The episcopal party in Scotland had gone such lengths that they could hardly be safe under any other king. The catholics of England were of course devoted to him. With the help of these he hoped to show himself so formidable that Charles would find it his interest to quit that cowardly line of politics to which he was sacrificing his honor and affections. Louis, never insensible to any occasion of rendering England weak and miserable, directed his ambassador to encourage the duke in this guilty project with the promise of assistance. It seems to have been prevented by the wisdom or public spirit of Churchill, who pointed out to Barillon the absurdity of supposing that the duke could stand by himself in Scotland. This scheme of lighting up the flames of civil war in three kingdoms, for James's private advantage, deserves to be more remarked than it has hitherto been at a time when his apologists seem to have become numerous. If the designs of Russell and Sidney for the preservation of their country's liberty are blamed as rash and unjustifiable, what name shall we give to the project of maintaining the pretensions of an individual by means of rebellion and general bloodshed?

§ 18. It is well known that those who took a concern in the maintenance of religion and liberty were much divided as to the best expedients for securing them; some, who thought the exclusion too violent, dangerous, or impracticable, preferring the enactment of limitations on the prerogatives of a catholic king. As soon as the exclusion became the topic of open discussion, the king repeatedly offered to grant every security that could be demanded consistently with the lineal succession. Hollis, Halifax, and for a time Essex, as well as several eminent men in the lower house, were in favor of limitations. But those which they intended to insist upon were such encroachments on the constitutional authority of the crown, that, except a title and revenue, which Charles thought more valuable than all the rest, a popish king would enjoy no one attribute of royalty. The king himself, on the 30th of April, 1679, before the heats on the subject had become so violent as they were the next year, offered not only to secure all ecclesiastical preferments from the control of a popish successor, but to provide that the parliament in being at a demise of the crown, or the last that had been dissolved, should immediately sit and be indissoluble for a certain time; that none of the privy council, nor judges, lord-lieutenant, deputy-lieutenant, nor officer of the navy, should be appointed during the reign of a catholic king, without consent of parliament. He offered, at the same time, most readily to consent to any further provision that could occur to the wisdom of parliament, for the security of religion and liberty consistently with the right of succession. Halifax, the eloquent and successful opponent of the exclusion, was the avowed champion of limitations. It was proposed, in addition to these offers of the king, that the duke, in case of his accession, should have no negative voice on bills; that he should dispose of no civil or military posts without the consent of parliament; that a council of forty-one, nominated by the two houses, should sit permanently during the recess or interval of parliament, with power of appointing to all vacant offices, subject to the future approbation of the lords and commons. These extraordinary innovations would, at least for the time, have changed our constitution into a republic; and justly appeared to many persons more revolutionary than an alteration in the course of succession. The duke of York looked on them with dismay; Charles, indeed, privately declared that he would never consent to such infringements of the prerogative. It is not, however, easy to perceive how he could have escaped

from the necessity of adhering to his own propositions, if the house of commons would have relinquished the bill of exclusion. Another expedient, still more ruinous to James than that of limitations, was what the court itself suggested in the Oxford parliament, that, the duke retaining the title of king, a regent should be appointed, in the person of the princess of Orange, with all the royal prerogatives; nay, that the duke, with his pageant crown on his head, should be banished from England during his life. This proposition, which is a great favorite with Burnet, appears liable to the same objections as were justly urged against a similar scheme at the revolution. It was certain that in either case James would attempt to obtain possession of power by force of arms; and the law of England would not treat very favorably those who should resist an acknowledged king in his natural capacity, while the statute of Henry VII. would, legally speaking, afford a security to the adherents of a de facto sovereign.

§ 19. It was in the year 1679 that the words Whig and Tory were first heard in their application to English factions; and, though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. There were then, indeed, questions in agitation which rendered the distinction more broad and intelligible than it has generally been in later times. One of these, and the most important, was the bill of exclusion; in which, as it was usually debated, the republican principle, that all positive institutions of society are in order to the general good, came into collision with that of monarchy, which rests on the maintenance of a royal line, as either the end, or at least the necessary means, of lawful government. But, as the exclusion was confessedly among those extraordinary measures to which men of tory principles are sometimes compelled to resort in great emergencies, and which no rational whig espouses at any other time, we shall better, perhaps, discern the formation of these grand political sects in the petitions for the sitting of parliament, and in the counter addresses of the opposite party.

§ 20. In the spring of 1679 Charles established a new privy council, by the advice of sir William Temple, consisting in great part of those eminent men in both houses of parliament who had been most prominent in their opposition to the late ministry. He publicly declared his resolution to govern entirely by the advice of this council and that of parliament. The duke of York was kept in what seemed a sort of exile at

Brussels. But the just suspicion attached to the king's character prevented the commons from placing much confidence in this new ministry; and, as frequently happens, abated their esteem for those who, with the purest intentions, had gone into the council. They had soon cause to perceive that their distrust had not been excessive. The ministers were constantly beaten in the house of lords; an almost certain test, in our government, of the court's insincerity. The parliament was first prorogued, then dissolved; against the advice, in the latter instance, of the majority of that council by whom the king had pledged himself to be directed. A new parliament, after being summoned to meet in October, 1679, was prorogued for a twelvemonth without the avowed concurrence of any member of that council. Lord Russell, and others of the honester party, withdrew from a board where their presence was only asked in mockery or deceit; and the whole specious scheme of Temple came to nothing before the conclusion of the year which had seen it displayed. Its author, chagrined at the disappointment of his patriotism and his vanity, has sought the causes of failure in the folly of Monmouth and perverseness of Shaftesbury. He was not aware, at least in their full extent, of the king's intrigues at this period. Charles, who had been induced to take those whom he most disliked into his council, with the hope of obtaining money from parliament, or of parrying the exclusion bill, and had consented to the duke of York's quitting England, found himself enthralled by ministers whom he could neither corrupt nor deceive; Essex, the firm and temperate friend of constitutional liberty in power as he had been out of it, and Halifax, not yet led away by ambition or resentment from the cause he never ceased to approve. He had recourse, therefore, to his accustomed refuge, and humbly implored the aid of Louis against his own council and parliament. He conjured his patron not to lose this opportunity of making England forever dependent upon France. These are his own words, such at least as Barillon attributes to him. In pursuance of this overture, a secret treaty was negotiated between the two kings; whereby, after a long haggling, Charles, for a pension of 1,000,000 livres annually during three years, obliged himself not to assemble parliament during that time. This negotiation was broken off through the apprehensions of Hyde and Sutherland, who had been concerned in it, about the end of November, 1679, before the long prorogation which is announced in the *Gazette* by a proclamation of December 11th. But the resolution

having been already taken not to permit the meeting of parliament, Charles persisted in it as the only means of escaping the bill of exclusion, even when deprived of the pecuniary assistance to which he had trusted.

§ 21. Though the king's behavior on this occasion exposed the fallacy of all projects for reconciliation with the house of commons, it was very well calculated for his own ends; nor was there any part of his reign wherein he acted with so much prudence as from this time to the dissolution of the Oxford parliament. The scheme concerted by his adversaries, and already put in operation, of pouring in petitions from every part of the kingdom for the meeting of parliament, he checked in the outset by a proclamation, artfully drawn up by chief-justice North, which, while it kept clear of any thing so palpably unconstitutional as a prohibition of petitions, served the purpose of manifesting the king's dislike to them, and encouraged the magistrates to treat all attempts that way as seditious and illegal, while it drew over the neutral and lukewarm to the safer and stronger side. Then were first ranged against each other the hosts of whig and tory, under their banners of liberty or loyalty; each zealous, at least in profession, to maintain the established constitution, but the one seeking its security by new maxims of government, the other by an adherence to the old.[8] It must be admitted that petitions to the king from bodies of his subjects, intended to advise or influence him in the exercise of his undoubted prerogatives, such as the time of calling parliament together, familiar as they may now have become, had no precedent, except one in the dark year 1640, and were repugnant to the ancient principles of our monarchy. The cardinal principle of toryism is, that the king ought to exercise all his lawful prerogatives without the interference, or the unsolicited advice, even of parliament, much less of the people. These novel efforts, therefore, were met by addresses from most of the grand juries, from the magistrates at quarter sessions, and from many corporations, expressing not merely their entire confidence in the king, but their *abhorrence* of the petitions for the assembling of parliament; a term which, having been casually used in one address, became the watch-word of the whole party. Some allowance must be made for the exertions made by the court,

[8] The name of whig, meaning sour milk, as is well known, is said to have originated in Scotland in 1648, and was given to those violent covenanters who opposed the duke of Hamilton's invasion of England in order to restore Charles I. Tory was a similar nickname for some of the wild Irish in Ulster.

especially through the judges of assize, whose charges to grand juries were always of a political nature. Yet there can be no doubt that the strength of the tories manifested itself beyond expectation. Sluggish and silent in its fields, like the animal which it has taken for its type, the deep-rooted loyalty of the English gentry to the crown may escape a superficial observer, till some circumstance calls forth an indignant and furious energy. The temper shown in 1680 was not according to what the late elections would have led men to expect, not even to that of the next elections for the parliament at Oxford. A large majority returned on both these occasions, and that in the principal counties as much as in corporate towns, were of the whig principle. It appears that the ardent zeal against popery in the smaller freeholders must have overpowered the natural influence of the superior classes. The middling and lower orders, particularly in towns, were clamorous against the duke of York and the evil counselors of the crown. But with the country gentlemen popery was scarce a more odious word than fanaticism; the memory of the late reign and of the usurpation was still recent, and in the violence of the commons, in the insolence of Monmouth and Shaftesbury, in the bold assaults upon hereditary right, they saw a faint image of that confusion which had once impoverished and humbled them. Meanwhile the king's dissimulation was quite sufficient for these simple loyalists; the very delusion of the popish plot raised his name for religion in their eyes, since his death was the declared aim of the conspirators; nor did he fail to keep alive this favorable prejudice by letting that imposture take its course, and by enforcing the execution of the penal laws against some unfortunate priests.

§ 22. It is among the great advantages of a court in its contention with the asserters of popular privileges, that it can employ a circumspect and dissembling policy, which is never found on the opposite side. The demagogues of faction, or the aristocratic leaders of a numerous assembly, even if they do not feel the influence of the passions they excite, which is rarely the case, are urged onward by their headstrong followers, and would both lay themselves open to the suspicion of unfaithfulness and damp the spirit of their party by a wary and temperate course of proceeding. Yet that incautious violence, to which ill-judging men are tempted by the possession of power, must in every case, and especially where the power itself is deemed a usurpation, cast them headlong. This was the fatal error of that house of com-

mons which met in October, 1680; and to this the king's triumph may chiefly be ascribed. The addresses declaratory of abhorrence of petitions for the meeting of parliament were doubtless intemperate with respect to the petitioners; but it was preposterous to treat them as violations of privilege. A few precedents, and those in times of much heat and irregularity, could not justify so flagrant an encroachment on the rights of the private subject as the commitment of men for a declaration so little affecting the constitutional rights and functions of parliament. That the commons had no right of judicature was admitted: was it compatible, many might urge, to principles of reason and justice that they could, merely by using the words contempt or breach of privilege in a warrant, deprive the subject of that liberty which the recent statute of Habeas Corpus had secured against the highest ministers of the crown? Yet one Thompson, a clergyman at Bristol, having preached some virulent sermons, wherein he had traduced the memory of Hampden for refusing the payment of ship-money, and spoken disrespectfully of queen Elizabeth, as well as insulted those who petitioned for the sitting of parliament, was sent for in custody of the sergeant to answer at the bar for his high misdemeanor against the privileges of that house; and was afterward compelled to find security for his forthcoming to answer to an impeachment voted against him on these strange charges. Many others were brought to the bar, not only for the crime of abhorrence, but for alleged misdemeanors still less affecting the privileges of parliament, such as remissness in searching for papists. Sir Robert Cann, of Bristol, was sent for in custody of the sergeant-at-arms, for publicly declaring that there was no popish, but only a presbyterian plot. A general panic, mingled with indignation, was diffused through the country, till one Stawell, a gentleman of Devonshire, had the courage to refuse compliance with the speaker's warrant; and the commons, who hesitated at such a time to risk an appeal to the ordinary magistrates, were compelled to let this contumacy go unpunished. If, indeed, we might believe the journals of the house, Stawell was actually in custody of the sergeant, though allowed a month's time on account of sickness. This was most probably a subterfuge to conceal the truth of the case.

These encroachments, under the name of privilege, were exactly in the spirit of the long parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths that 1641 was come about again.

There appeared, indeed, for several months a very imminent danger of civil war. I have already mentioned the projects of the duke of York, in case his brother had given way to the exclusion bill. There could be little reason to doubt that many of the opposite leaders were ready to try the question by arms. The just abhorrence good men entertain for such a calamity excites their indignation against those who conspicuously bring it on. And, however desirous some of the court might be to strengthen the prerogative by quelling a premature rebellion, the commons were, in the eyes of the nation, far more prominent in accelerating so terrible a crisis. Their votes in the session of November, 1680, were marked by the most extravagant factiousness. Their conduct in the short parliament held at Oxford, in March, 1681, served still more to alienate the peaceable part of the community. That session of eight days was marked by the rejection of a proposal to vest all effective power during the duke of York's life in a regent, which, as has been already observed, was by no means a secure measure, and by a much less justifiable attempt to screen the author of a treasonable libel from punishment under the pretext of impeaching him at the bar of the upper house. It seems difficult not to suspect that the secret instigations of Barillon, and even his gold, had considerable influence on some of those who swayed the votes of this parliament.

§ 23. Though the impeachment of Fitzharris, to which I have just alluded, was in itself a mere work of temporary faction, it brought into discussion a considerable question in our constitutional law, which deserves notice both on account of its importance and because a popular writer has advanced an untenable proposition on the subject. The commons impeached this man of high treason. The lords voted that he should be proceeded against at common law. It was resolved, in consequence, by the lower house, "that it is the undoubted right of the commons in parliament assembled to impeach before the lords in parliament any peer or commoner for treason, or any other crime or misdemeanor; and that the refusal of the lords to proceed in parliament upon such impeachment is a denial of justice, and a violation of the constitution of parliament." It seems, indeed, difficult to justify the determination of the lords. Certainly the declaration in the case of sir Simon de Bereford, who, having been accused by the king, in the fourth year of Edward III., before the lords, of participating in the treason of Roger Mortimer, that noble assembly protested, "with the assent

of the king in full parliament, that, albeit they had taken upon them, as judges of the parliament, in the presence of the king, to render judgment, yet the peers who then were or should be in time to come were not bound to render judgment upon others than peers, nor had power to do so; and that the said judgment thus rendered should never be drawn to example or consequence in time to come, whereby the said peers of the land might be charged to judge others than their peers, contrary to the laws of the land;" certainly, I say, this declaration, even if it amounted to a statute, concerning which there has been some question, was not necessarily to be interpreted as applicable to impeachments at the suit of the commons, wherein the king is no ways a party. There were several precedents in the reign of Richard II. of such impeachments for treason. There had been more than one in that of Charles I. And if the doctrine adopted by the lords were to be carried to its just consequences, all impeachment of commoners must be at an end; for no distinction is taken in the above declaration as to Bereford between treason and misdemeanor. The peers had indeed lost their ancient privilege in cases of misdemeanor, and were subject to the verdict of a jury; but the principle was exactly the same, and the right of judging commoners upon impeachment for corruption or embezzlement, which no one called in question, was as much an exception from the ordinary rules of law as in the more rare case of high treason. It is hardly necessary to observe that the 29th section of Magna Charta, which establishes the right of trial by jury, is by its express language solely applicable to the suits of the crown.

This very dangerous and apparently unfounded theory, broached upon the occasion of Fitzharris's impeachment by the earl of Nottingham, never obtained reception; and was rather intimated than avowed in the vote of the lords that he should be proceeded against at common law. But, after the revolution, the commons having impeached sir Adam Blair and some others of high treason, a committee was appointed to search for precedents on this subject; and, after full deliberation, the house of lords came to a resolution that they would proceed on the impeachments. The inadvertent position, therefore, of Blackstone,[9] that a commoner can not be impeached for high treason, is not only difficult to be supported upon ancient authorities, but contrary to the latest determination of the supreme tribunal.

§ 24. No satisfactory elucidation of the strange libel for

[9] Commentaries, vol. iv., c. 19.

which Fitzharris suffered death has yet been afforded. There is much probability in the supposition that it was written at the desire of some in the court, in order to cast odium on their adversaries; a very common stratagem of unscrupulous partisans.[10] It caused an impression unfavorable to the whigs in the nation. The court made a dexterous use of that extreme credulity which has been supposed characteristic of the English, though it belongs at least equally to every other people. They seized into their hands the very engines of delusion that had been turned against them. Those perjured witnesses, whom Shaftesbury had hallooed on through all the infamy of the popish plot, were now arrayed in the same court to swear treason and conspiracy against him. Though he escaped by the resoluteness of his grand jury, who refused to find a bill of indictment on testimony which they professed themselves to disbelieve, and which was probably false, yet this extraordinary deviation from the usual practice did harm rather than otherwise to the general cause of his faction. The judges had taken care that the witnesses should be examined in open court, so that the jury's partiality, should they reject such positive testimony, might become glaring. Whether the grand jury of London, in their celebrated ignoramus on the indictment preferred against Shaftesbury, had sufficient grounds for their incredulity I will not pretend to determine. There was probably no one man among them who had not implicitly swallowed the tales of the same witnesses in the trials for the plot. The nation, however, in general, less bigoted, or at least more honest in their bigotry, than those London citizens, was staggered by so many depositions to a traitorous conspiracy, in those who had pretended an excessive loyalty to the king's person. Men unaccustomed to courts of justice are naturally prone to give credit to the positive oaths of witnesses. They were still more persuaded when, as in the trial of College at Oxford, they saw this testimony sustained by the approbation of a judge (and that judge a decent person who gave no scandal), and confirmed by the verdict of a jury.

§ 25. The king's declaration of the reasons that induced him to dissolve the last parliament, being a manifesto against the late majority of the house of commons, was read in all churches. The clergy scarcely waited for this pretext to

[10] Fitzharris was an Irish papist, who had evidently had interviews with the king through lady Portsmouth. One Hawkins, afterward made dean of Chichester for his pains, published a narrative of this case, full of falsehoods.

take a zealous part for the crown. Every one knows their influence over the nation in any cause which they make their own. They seemed to change the war against liberty into a crusade. They re-echoed from every pulpit the strain of passive obedience, of indefeasible hereditary right, of the divine origin and patriarchal descent of monarchy. Now began again the loyal addresses, more numerous and ardent than in the last year, which overspread the pages of the *London Gazette* for many months. These effusions stigmatize the measures of the last three parliaments, dwelling especially on their arbitrary illegal votes against the personal liberty of the subject.

The whigs, meantime, so late in the heyday of their pride, lay, like the fallen angels, prostrate upon the fiery lake. The scoffs and gibes of libelers, who had trembled before the resolutions of the commons, were showered upon their heads. They had to fear, what was much worse than the insults of these vermin, the perjuries of mercenary informers suborned by their enemies to charge false conspiracies against them, and sure of countenance from the contaminated benches of justice. The court, with an artful policy, though with detestable wickedness, secured itself against its only great danger, the suspicion of popery, by the sacrifice of Plunket, the titular archbishop of Dublin. The execution of this worthy and innocent person can not be said to have been extorted from the king in a time of great difficulty, like that of lord Stafford. He was coolly and deliberately permitted to suffer death, lest the current of loyalty, still sensitive and suspicious upon the account of religion, might be somewhat checked in its course. Yet those who heap the epithets of merciless, inhuman, sanguinary, on the whig party for the impeachment of lord Stafford, in whose guilt they fully believed, seldom mention, without the characteristic distinction of "good-natured," that sovereign who permitted the execution of Plunket, of whose innocence he was assured.

§ 26. The hostility of the city of London, and of several other towns, toward the court, degenerating no doubt into a factious and indecent violence, gave a pretext for the most dangerous aggression on public liberty that occurred in the present reign. The power of the democracy in that age resided chiefly in the corporations. These returned, exclusively or principally, a majority of the representatives of the commons. So long as they should be actuated by that ardent spirit of protestantism and liberty which prevailed in the middling classes, there was little prospect of obtaining a

parliament that would co-operate with the Stuart scheme of government. The administration of justice was very much in the hands of their magistrates, especially in Middlesex, where all juries are returned by the city sheriffs. It was suggested, therefore, by some crafty lawyers that a judgment of forfeiture obtained against the corporation of London would not only demolish that citadel of insolent rebels, but intimidate the rest of England by so striking an example. An information, as it is called, quo warranto, was accordingly brought into the court of king's bench against the corporation. Two acts of the common council were alleged as sufficient misdemeanors to warrant a judgment of forfeiture: one, the imposition of certain tolls on goods brought into the city markets by an ordinance or by-law of their own; the other, their petition to the king in December, 1679, for the sitting of parliament, and its publication throughout the country. It would be foreign to the purpose of this work to inquire whether a corporation be in any case subject to forfeiture, the affirmative of which seems to have been held by courts of justice since the revolution; or whether the exaction of tolls in their markets, in consideration of erecting stalls and standings, were within the competence of the city of London; or, if not so, whether it were such an offense as could legally incur the penalty of a total forfeiture and disfranchisement; since it was manifest that the crown made use only of this additional pretext in order to punish the corporation for its address to the king. We are not, however, so much concerned to argue the matter of law in this question, as to remark the spirit in which the attack on this stronghold of popular liberty was conceived. The court of king's bench pronounced judgment of forfeiture against the corporation; but this judgment, at the request of the attorney-general, was only recorded; the city continued in appearance to possess its corporate franchises, but upon submission to certain regulations—namely, that no mayor, sheriff, recorder, or other chief officer, should be admitted until approved by the king; that, in the event of his twice disapproving their choice of a mayor, he should himself nominate a fit person, and the same in case of sheriffs, without waiting for a second election; that the court of aldermen, with the king's permission, might remove any one of their body; that they should have a negative on the elections of common councilmen, and, in case of disapproving a second choice, have themselves the nomination. The corporation submitted thus to purchase the continued enjoyment of its estates at the ex-

pense of its municipal independence; yet, even in the prostrate condition of the whig party, the question to admit these regulations was carried by no great majority in the common councils. The city was, of course, absolutely subservient to the court from this time to the revolution.

After the fall of the capital it was not to be expected that towns less capable of defense should stand out. Informations quo warranto were brought against several corporations, and a far greater number hastened to anticipate the assault by voluntary surrenders. It seemed to be recognized as law by the judgment against London that any irregularity or misuse of power in a corporation might incur a sentence of forfeiture, and few could boast that they were invulnerable at every point. The judges of assize in their circuits prostituted their influence and authority to forward this and every other encroachment of the crown. Jeffreys, on the northern circuit, in 1684, to use the language of Charles II.'s most unblushing advocate, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns."[11] They received, instead, new charters, framing the constitution of these municipalities in a more oligarchical model, and reserving to the crown the first appointment of those who were to form the governing part of the corporation. These changes were gradually brought about in the last three years of Charles's reign and in the beginning of the next.

§ 27. There can be nothing so destructive to the English constitution, not even the introduction of a military force, as the exclusion of the electoral body from their franchises. The people of this country are, by our laws and constitution, bound only to obey a parliament duly chosen; and this violation of charters, in the reigns of Charles and James, appears to be the great and leading justification of that event which drove the latter from the throne. It can, therefore, be no matter of censure, in a moral sense, that some men of pure and patriotic virtue, mingled, it must be owned, with others of a far inferior temper, began to hold consultations as to the best means of resisting a government which, whether to judge from these proceedings, or from the language of its partisans, was aiming without disguise at an arbitrary power. But as resistance to established authority can never be warrantable until it is expedient, we could by no means approve any schemes of insurrection that might be projected in 1682, unless we could perceive that there was a

[11] North's Examen, 626.

fair chance of their success. And this we are not led, by what we read of the spirit of those times, to believe. The tide ran violently in another direction; the courage of the whigs was broken; their adversaries were strong in numbers and in zeal. But hence it is reasonable to infer that men like lord Essex and lord Russell, with so much to lose by failure, with such good sense, and such abhorrence of civil calamity, would not ultimately have resolved on the desperate issue of arms, though they might deem it prudent to form estimates of their strength, and to knit together a confederacy which absolute necessity might call into action. It is beyond doubt that the supposed conspirators had debated among themselves the subject of an insurrection, and poised the chances of civil war. Thus much the most jealous lawyer, I presume, will allow might be done, without risking the penalties of treason. They had, however, gone farther; and by concerting measures in different places as well as in Scotland, for a rising, though contingently, and without any fixed determination to carry it into effect, most probably (if the whole business had been disclosed in testimony) laid themselves open to the law, according to the construction it has frequently received. There is a considerable difficulty, after all that has been written, in stating the extent of their designs; but I think we may assume that a wide-spreading and formidable insurrection was for several months in agitation. But the difficulties and hazards of the enterprise had already caused lord Russell and lord Essex to recede from the desperate counsels of Shaftesbury; and but for the unhappy detection of the conspiracy and the perfidy of lord Howard, these two noble persons, whose lives were untimely lost to their country, might have survived to join the banner and support the throne of William. It is needless to observe that the minor plot, if we may use that epithet in reference to the relative dignity of the conspirators, for assassinating the king and the duke of York, had no immediate connection with the schemes of Russell, Essex, and Sidney.[12]

§ 28. But it is by no means a consequence from the admission we have made that the evidence adduced on lord Russell's trial was sufficient to justify his conviction.[13] It appears to me that lord Howard, and perhaps Rumsey, were

[12] There appears no cause for doubting the reality of what is called the Rye-house Plot.

[13] Lord Essex cut his throat in the Tower. He was a man of the most excellent qualities, but subject to constitutional melancholy, which overcame his fortitude; an event the more to be deplored, as there seems to have been no possibility of his being convicted.

unwilling witnesses; and that the former, as is frequently the case with those who betray their friends in order to save their own lives, divulged no more than was extracted by his own danger. The testimony of neither witness, especially Howard, was given with any degree of that precision which is exacted in modern times; and, as we now read the trial, it is not probable that a jury in later ages would have found a verdict of guilty, or would have been advised to it by the court. But, on the other hand, if lord Howard were really able to prove more than he did, which I much suspect, a better-conducted examination would probably have elicited facts unfavorable to the prisoner, which at present do not appear. It may be doubtful whether any overt act of treason is distinctly proved against lord Russell, except his concurrence in the project of a rising at Taunton, to which Rumsey deposes. But this, depending on the oath of a single witness, could not be sufficient for a conviction.

Pemberton, chief-justice of the common pleas, tried this illustrious prisoner with more humanity than was usually displayed on the bench; but, aware of his precarious tenure in office, he did not venture to check the counsel for the crown, Sawyer and Jeffreys, permitting them to give a great body of hearsay evidence, with only the feeble and useless remark that it did not affect the prisoner. Yet he checked lord Anglesea, when he offered similar evidence for the defense. In his direction to the jury, it deserves to be remarked that he by no means advanced the general proposition, which better men have held, that a conspiracy to levy war is in itself an overt act of compassing the king's death; limiting it to cases where the king's person might be put in danger, as, in the immediate instance, by the alleged scheme of seizing his guards. His language, indeed, as recorded in the printed trial, was such as might have produced a verdict of acquittal from a jury tolerably disposed toward the prisoner; but the sheriffs, North and Rich, who had been illegally thrust into office, being men wholly devoted to the prerogative, had taken care to return a panel in whom they could confide.

The trial of Algernon Sidney, at which Jeffreys, now raised to the post of chief-justice of the king's bench, presided, is as familiar to all my readers as that of lord Russell. Their names have been always united in grateful veneration and sympathy. It is notorious that Sidney's conviction was obtained by a most illegal distortion of the evidence. Besides lord Howard, no living witness could be produced to the

conspiracy for an insurrection; and though Jeffreys permitted two others to prepossess the jury by a second-hand story, he was compelled to admit that their testimony could not directly affect the prisoner. The attorney-general, therefore, had recourse to a paper found in his house, which was given in evidence, either as an overt act of treason by its own nature, or as connected with the alleged conspiracy; for though it was only in the latter sense that it could be admissible at all, yet Jeffreys took care to insinuate, in his charge to the jury, that the doctrines it contained were treasonable in themselves, and without reference to other evidence. In regard to truth, and to that justice which can not be denied to the worst men in their worst actions, I must observe that the common accusation against the court in this trial, of having admitted insufficient proof by the mere comparison of handwriting, though alleged, not only in most of our historians, but in the act of parliament reversing Sidney's attainder, does not appear to be well founded; the testimony to that fact, unless the printed trial is falsified in an extraordinary degree, being such as would be received at present. We may allow, also, that the passages from this paper, as laid in the indictment, containing very strong assertions of the right of the people to depose an unworthy king, might by possibility, if connected by other evidence with the conspiracy itself, have been admissible as presumptions for the jury to consider whether they had been written in furtherance of that design. But when they came to be read on the trial with their context, though only with such parts of that as the attorney-general chose to produce out of a voluminous manuscript, it was clear that they belonged to a theoretical work on government, long since perhaps written, and incapable of any bearing upon the other evidence.

The manifest iniquity of this sentence upon Algernon Sidney, as well as the high courage he displayed throughout these last scenes of his life, have inspired a sort of enthusiasm for his name, which neither what we know of his story, nor the opinion of his contemporaries, seems altogether to warrant. The crown of martyrdom should be suffered, perhaps, to exalt every virtue, and efface every defect, in patriots, as it has often done in saints. In the faithful mirror of history Sidney may lose something of this lustre. He possessed, no doubt, a powerful, active, and undaunted mind, stored with extensive reading on the topics in which he delighted. But having proposed one only object for his political conduct, the establishment of a republic in England, his

pride and inflexibility, though they gave a dignity to his character, rendered his views narrower and his temper unaccommodating. It was evident to every reasonable man that a republican government, being adverse to the prepossessions of a great majority of the people, could only be brought about and maintained by the force of usurpation. Yet for this idol of his speculative hours he was content to sacrifice the liberties of Europe, to plunge the country in civil war, and even to stand indebted to France for protection. He may justly be suspected of having been the chief promoter of the dangerous cabals with Barillon; nor could any tool of Charles's court be more sedulous in representing the aggressions of Louis XIV. in the Netherlands as indifferent to our honor and safety.

Sir Thomas Armstrong, who had fled to Holland on the detection of the plot, was given up by the States. A sentence of outlawry, which had passed against him in his absence, is equivalent, in cases of treason, to a conviction of the crime. But the law allows the space of one year, during which the party may surrender himself to take his trial. Armstrong, when brought before the court, insisted on this right, and demanded a trial. Nothing could be more evident, in point of law, than that he was entitled to it; but Jeffreys, with inhuman rudeness, treated his claim as wholly unfounded, and would not even suffer counsel to be heard in his behalf. He was executed accordingly without trial.

§ 29. The prejudice against the whig party, which had reached so great a height in 1681, was still further enhanced by the detection of the late conspiracy. The atrocious scheme of assassination alleged against Walcot and some others who had suffered was blended by the arts of the court and clergy, and by the blundering credulity of the gentry, with those less heinous projects ascribed to lord Russell and his associates. These projects, if true in their full extent, were indeed such as men honestly attached to the government of their country could not fail to disapprove. For this purpose a declaration full of malicious insinuations was ordered to be read in all churches. It was generally commented upon, we may make no question, in one of those loyal discourses, which trampling on all truth, charity, and moderation, had no other scope than to inflame the hearers against non-conforming protestants, and to throw obloquy on the constitutional privileges of the subject.

It is not my intention to censure, in any strong sense of the word, the Anglican clergy at this time for their asser-

tion of absolute non-resistance, so far as it was done without calumny and insolence toward those of another way of thinking, and without self-interested adulation of the ruling power. Their error was very dangerous, and had nearly proved destructive of the whole constitution; but it was one which had come down with high recommendation, and of which they could only, perhaps, be undeceived, as men are best undeceived of most errors, by experience that it might hurt themselves. It was the tenet of their homilies, their canons, their most distinguished divines and casuists; it had the apparent sanction of the legislature in a statute of the present reign. Many excellent men, as was shown after the revolution, who had never made use of this doctrine as an engine of faction or private interest, could not disentangle their minds from the arguments or the authority on which it rested. But by too great a number it was eagerly brought forward to serve the purposes of arbitrary power, or at best to fix the wavering protestantism of the court by professions of unimpeachable loyalty. To this motive, in fact, we may trace a good deal of the vehemence with which the non-resisting principle had been originally advanced by the church of England under the Tudors, and was continually urged under the Stuarts. If we look at the tracts and sermons published by both parties after the restoration, it will appear manifest that the Romish and Anglican churches bade, as it were, against each other for the favor of the two royal brothers. The one appealed to its acknowledged principles, while it denounced the pretensions of the holy see to release subjects from their allegiance, and the bold theories of popular government which Mariana and some other jesuits had promulgated. The other retaliated on the first movers of the Reformation, and expatiated on the usurpation of lady Jane Grey, not to say Elizabeth, and the republicanism of Knox or Calvin.

From the era of the exclusion-bill especially, to the death of Charles II., a number of books were published in favor of an indefeasible hereditary right of the crown, and of absolute non-resistance. These were, however, of two very different classes. The authors of the first, who were perhaps the more numerous, did not deny the legal limitations of monarchy. They admitted that no one was bound to concur in the execution of unlawful commands. Hence the obedience they deemed indispensable was denominated passive; an epithet, which in modern usage is little more than redundant, but at that time made a sensible distinction. If all

men should confine themselves to this line of duty, and merely refuse to become the instruments of such unlawful commands, it was evident that no tyranny could be carried into effect. If some should be wicked enough to co-operate against the liberties of their country, it would still be the bounden obligation of Christians to submit. Of this, which may be reckoned the moderate party, the most eminent were Hickes, in a treatise called Jovian, and Sherlock, in his case of resistance to the supreme powers. To this, also, must have belonged archbishop Sancroft, and the great body of non-juring clergy who had refused to read the declaration of indulgence under James II., and whose conduct in that respect would be utterly absurd, except on the supposition that there existed some lawful boundaries of the royal authority.

But besides these men, who kept some measures with the constitution, another and a pretty considerable class of writers did not hesitate to avow their abhorrence of all limitations upon arbitrary power. Brady went back to the primary sources of our history, and endeavored to show that Magna Charta, as well as every other constitutional law, were but rebellious encroachments on the ancient uncontrollable, imprescriptible prerogatives of the monarchy. But the author most in vogue with the partisans of despotism was sir Robert Filmer. He had lived before the civil war, but his posthumous writings came to light about this period. They contain an elaborate vindication of what was called the patriarchal scheme of government, which, rejecting with scorn that original contact whence human society had been supposed to spring, derives all legitimate authority from that of primogeniture, the next heir being king by divine right, and as incapable of being restrained in his sovereignty as of being excluded from it.

These treatises of Filmer obtained a very favorable reception. We find the patriarchal origin of government frequently mentioned in the publications of this time as an undoubted truth. Considered with respect to his celebrity rather than his talents, he was not, as some might imagine, too ignoble an adversary for Locke to have combated. Another person, far superior to Filmer in political eminence, undertook at the same time an unequivocal defense of absolute monarchy. This was sir George Mackenzie, the famous lord-advocate of Scotland. In his "Jus Regium," published in 1684, and dedicated to the university of Oxford, he maintains that "monarchy in its nature is absolute, and consequently these pretended limitations are against the nature of monarchy."

It was at this time that the university of Oxford published their celebrated decree against pernicious books and damnable doctrines, enumerating as such above twenty propositions, which they anathematized as false, seditious, and impious. The first of these is, that all civil authority is derived originally from the people; the second, that there is a compact, tacit or express, between the king and his subjects: and others follow of the same description. They do not explicitly condemn a limited monarchy, like Filmer, but evidently adopt his scheme of primogenitary right, which is, perhaps, almost incompatible with it. This decree was publicly burned by an order of the house of lords in 1709; nor does there seem to have been a single dissent in that body to a step that cast such a stigma on the university. But the disgrace of the offense was greater than that of the punishment.

§ 30. We can frame no adequate conception of the jeopardy in which our liberties stood under the Stuarts, especially in this particular period, without attending to this spirit of servility which had been so sedulously excited. It seemed as if England was about to play the scene which Denmark had not long since exhibited, by a spontaneous surrender of its constitution. And although this loyalty were much more on the tongue than in the heart, as the next reign very amply disclosed, it served at least to deceive the court into a belief that its future steps would be almost without difficulty. It is uncertain whether Charles would have summoned another parliament. The period fixed by law had elapsed nearly twelve months before his death; and we have no evidence that a new parliament was in contemplation. But Louis, on the other hand, having discontinued his annual subsidy to the king in 1684, after gaining Strasburg and Luxemburg by his connivance, or rather co-operation, it would not have been easy to avoid a recurrence to the only lawful source of revenue. The king of France, it should be observed, behaved toward Charles as men usually treat the low tools by whose corruption they have obtained any end. During the whole course of their long negotiations, Louis, though never the dupe of our wretched monarch, was compelled to endure his shuffling evasions, and pay dearly for his base compliances. But when he saw himself no longer in need of them, it seems to have been in revenge that he permitted the publication of the secret treaty of 1670, and withdrew his pecuniary aid. Charles deeply resented both these marks of desertion in his ally. In addition to them, he discovered the intrigues of the

French ambassadors with his malcontent commons. He perceived, also, that by bringing home the duke of York from Scotland, and restoring him, in defiance of the test act, to the privy council, he had made the presumptive heir of the throne, possessed as he was of superior steadiness and attention, too near a rival to himself. These reflections appear to have depressed his mind in the latter months of his life, and to have produced that remarkable private reconciliation with the duke of Monmouth, through the influence of lord Halifax, which, had he lived, would very probably have displayed one more revolution in the uncertain policy of this reign. But a death, so sudden and inopportune as to excite suspicions of poison in some most nearly connected with him, gave a more decisive character to the system of government.

CHAPTER XIII.

ON THE STATE OF THE CONSTITUTION UNDER CHARLES II.

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§ 1. IT may seem rather an extraordinary position, after the last chapters, yet is strictly true, that the fundamental privileges of the subject were less invaded, the prerogative swerved into fewer excesses, during the reign of Charles II. than in any former period of equal length. Thanks to the patriotic energies of Selden and Eliot, of Pym and Hampden, the constitutional boundaries of royal power had been so well established that no minister was daring enough to attempt any flagrant and general violation of them. The frequent session of parliament, and its high estimation of its own privileges, furnished a security against illegal taxation. Nothing of this sort has been imputed to the government of Charles, the first king of England, perhaps, whose reign was wholly free from such a charge. And as the nation happily escaped the attempts that were made after the Restoration to revive the star-chamber and high commission courts, there were no means of chastising political delinquencies except through the regular tribunals of justice and through the verdict of a jury. Ill as the one were often constituted, and submissive as the other might often be found, they afforded something more of a guaranty, were it only by the publicity of their proceedings, than the dark and silent divan of courtiers and prelates who sat in judgment under the two former kings of the house of Stuart. Though the bench was frequently subservient, the bar contained high-spirited advocates whose firm defense of their clients the judges often reproved, but no longer affected to punish. The press, above all, was in

continual service. An eagerness to peruse cheap and ephemeral tracts on all subjects of passing interest had prevailed ever since the Reformation. These had been extraordinarily multiplied from the meeting of the long parliament. Some thousand pamphlets of different descriptions, written between that time and the Restoration, may be found in the British Museum; and no collection can be supposed to be perfect. It would have required the summary process and stern severity of the court of star-chamber to repress this torrent, or reduce it to those bounds which a government is apt to consider as secure. But the measures taken with this view under Charles II. require to be distinctly noticed.

§ 2. In the reign of Henry VIII., when the political importance of the art of printing, especially in the great question of the Reformation, began to be apprehended, it was thought necessary to assume an absolute control over it, partly by the king's general prerogative, and still more by virtue of his ecclesiastical supremacy. Thus it became usual to grant by letters patent the exclusive right of printing the Bible or religious books, and afterward all others. The privilege of keeping presses was limited to the members of the stationers' company, who were bound by regulations established in the reign of Mary by the star-chamber, for the contravention of which they incurred the speedy chastisement of that vigilant tribunal. These regulations not only limited the number of presses, and of men who should be employed on them, but subjected new publications to the previous inspection of a licenser. The long parliament did not hesitate to copy this precedent of a tyranny they had overthrown; and, by repeated ordinances against unlicensed printing, hindered, as far as in them lay, this great instrument of political power from serving the purposes of their adversaries. Every government, however popular in name or origin, must have some uneasiness from the great mass of the multitude, some vicissitudes of public opinion to apprehend; and experience shows that republics, especially in a revolutionary season, shrink as instinctively, and sometimes as reasonably, from an open license of the tongue and pen, as the most jealous court. We read the noble apology of Milton for the freedom of the press with admiration; but it had little influence on the parliament to whom it was addressed.

§ 3. It might easily be anticipated, from the general spirit of lord Clarendon's administration, that he would not suffer the press to emancipate itself from these established shackles. A bill for the regulation of printing failed in 1661, from the

commons' jealousy of the peers, who had inserted a clause exempting their own houses from search. But next year a statute was enacted, which, reciting "the well-government and regulating of printers and printing-presses to be matter of public care and concernment, and that by the general licentiousness of the late times many evil-disposed persons had been encouraged to print and sell heretical and seditious books," prohibits every private person from printing any book or pamphlet, unless entered with the stationers' company, and duly licensed in the following manner: to wit, books of law by the chancellor or one of the chief-justices, of history and politics by the secretary of state, of heraldry by the kings at arms, of divinity, physic, or philosophy, by the bishops of Canterbury or London, or, if printed at either university, by its chancellor. The number of master-printers was limited to twenty; they were to give security, to affix their names, and to declare the author, if required by the licenser. The king's messengers, by warrant from a secretary of state, or the master and wardens of the stationers' company, were empowered to seize unlicensed copies wherever they should think fit to search for them, and, in case they should find any unlicensed books suspected to contain matters contrary to the church or state, they were to bring them to the two bishops before mentioned, or one of the secretaries. No books were allowed to be printed out of London, except in York and in the universities. The penalties for printing without license were of course heavy. This act was only to last three years; and after being twice renewed (the last time until the conclusion of the first session of the next parliament), expired consequently in 1679; an era when the house of commons were happily in so different a temper that any attempt to revive it must have proved abortive. During its continuance the business of licensing books was intrusted to sir Roger L'Estrange, a well-known pamphleteer of that age, and himself a most scurrilous libeler in behalf of the party he espoused, that of popery and despotic power. It is hardly necessary to remind the reader of the objections that were raised to one or two lines in "Paradise Lost."

§ 4. Though a previous license ceased to be necessary, it was held by all the judges, having met for this purpose (if we believe chief-justice Scroggs) by the king's command, that all books scandalous to the government or to private persons may be seized, and the authors or those exposing such books punished; and that all writers of false news, though not scandalous or seditious, are indictable on that

account. But in a subsequent trial he informs the jury that, "when by the king's command we were to give in our opinion what was to be done in point of regulation of the press, we did all subscribe that to print or publish any news, books, or pamphlets of news whatsoever, is illegal; that it is a manifest intent to the breach of the peace, and they may be proceeded against by law as an illegal thing. Suppose, now, that this thing is not scandalous, what then? If there had been no reflection in this book at all, yet it is *illicite;* and the author ought to be convicted for it. And that is for a public notice to all people, and especially printers and booksellers, that they ought to print no book or pamphlet of news whatsoever without authority. The pretended libel in this case was a periodical pamphlet, entitled the "Weekly Pacquet of Advice from Rome;" being rather a virulent attack on popery then serving the purpose of a newspaper. These extraordinary propositions were so far from being loosely advanced, that the court of king's bench proceeded to make an order that the book should no longer be printed or published by any person whatsoever. Such an order was evidently beyond the competence of that court, were even the prerogative of the king in council as high as its warmest advocates could strain it. It formed, accordingly, one article of the impeachment voted against Scroggs in the next session. Another was for issuing general warrants (that is, warrants wherein no names are mentioned) to seize seditious libels and apprehend their authors. But this impeachment having fallen to the ground, no check was put to general warrants, at least issued by the secretary of state, till the famous judgment of the court of common pleas in 1763.

§ 5. Those encroachments on the legislative supremacy of parliament, and on the personal rights of the subject, by means of proclamations issued from the privy council, which had rendered former princes of both the Tudor and Stuart families almost arbitrary masters of their people, had fallen with the odious tribunal by which they were enforced. The king was restored to nothing but what the law had preserved to him. Few instances appear of illegal proclamations in his reign. One of these is a proclamation for shutting up coffee-houses, in December, 1675. I have already mentioned this as an intended measure of lord Clarendon. Coffee-houses were all at that time subject to a license, granted by the magistrates at quarter sessions. But, the licenses having been granted for a certain time, it was justly questioned whether they could in any manner be revoked.

This proclamation being of such disputable legality, the judges, according to North, were consulted, and intimating to the council that they were not agreed in opinion upon the most material questions submitted to them, it seemed advisable to recall it. In this essential matter of proclamations, therefore, the administration of Charles II. is very advantageously compared with that of his father; and, considering, at the same time, the entire cessation of impositions of money without consent of parliament, we must admit that, however dark might be his designs, there were no such general infringements of public liberty in his reign as had continually occurred before the long parliament.

§ 6. One undeniable fundamental privilege had survived the shocks of every revolution; and in the worst times, except those of the late usurpation, had been the standing record of primeval liberty — the trial by jury: whatever infringement had been made on this, in many cases of misdemeanor, by the present jurisdiction of the star-chamber, it was impossible, after the bold reformers of 1641 had lopped off that unsightly excrescence from the constitution, to prevent a criminal charge from passing the legal course of investigation through the inquest of a grand jury and the verdict in open court of a petty jury. But the judges, and other ministers of justice, for the sake of their own authority or that of the crown, devised various means of subjecting juries to their own direction, by intimidation, by unfair returns of the panel, or by narrowing the boundaries of their lawful function. It is said to have been the practice, in early times, to fine juries for returning verdicts against the direction of the court, even as to matter of evidence, or to summon them before the star-chamber. It seems that instances of this kind were not very numerous after the accession of Elizabeth; yet a small number occur in our books of reports. They were probably sufficient to keep juries in much awe. But after the restoration, two judges, Hyde and Keeling, successively chief-justices of the king's bench, took on them to exercise a pretended power, which had at least been intermitted in the time of the commonwealth. The grand jury of Somerset, having found a bill for manslaughter instead of murder, against the advice of the latter judge, were summoned before the court of king's bench, and dismissed with a reprimand instead of a fine. In other cases fines were set on petty juries for acquittals against the judge's direction. This unusual and dangerous inroad on so important a right attracted the notice of the house of commons; and a

committee was appointed, who reported some strong resolutions against Keeling for illegal and arbitrary proceedings in his office, the last of which was, that he be brought to trial, in order to condign punishment, in such manner as the house should deem expedient. But the chief-justice, having requested to be heard at the bar, so far extenuated his offense, that the house, after resolving that the practice of finding or imprisoning jurors is illegal, came to a second resolution to proceed no further against him.

§ 7. The precedents, however, which these judges endeavored to establish, were repelled in a more decisive manner than by a resolution of the house of commons. For in two cases, where the fines thus imposed upon jurors had been entreated into the exchequer, Hale, then chief baron, with the advice of most of the judges of England, as he informs us, stayed process; and in a subsequent case it was resolved by all the judges, except one, that it was against law to fine a jury for giving a verdict contrary to the court's direction. Yet notwithstanding this very recent determination, the recorder of London, in 1670, upon the acquittal of the quakers, Penn and Mead, on an indictment for an unlawful assembly, imposed a fine of forty marks on each of the jury. Bushell, one of their number, being committed for non-payment of this fine, sued his writ of habeas corpus from the court of common pleas; and, on the return made, that he had been committed for finding a verdict against full and manifest evidence, and against the direction of the court, chief-justice Vaughan held the ground to be insufficient, and discharged the party. In his reported judgment on this occasion he maintains the practice of fining jurors, merely on this account, to be comparatively recent, and clearly against law. No later instance of it is recorded; and perhaps it can only be ascribed to the violence that still prevailed in the house of commons against non-conformists that the recorder escaped its animadversion.

In this judgment of the chief-justice Vaughan he was led to enter on a question much controverted in later times—the legal right of the jury, without the direction of the judge, to find a general verdict in criminal cases, where it determines not only the truth of the facts as deposed, but their quality of guilt or innocence; or, as it is commonly, though not, perhaps, quite accurately worded, to judge of the law as well as the fact. It is a received maxim with us, that the judge can not decide on questions of fact, nor the jury on those of law. Whenever the general principle, or what may be termed the

major proposition of the syllogism, which every litigated case contains, can be extracted from the particular circumstances to which it is supposed to apply, the court pronounce their own determination, without reference to a jury. The province of the latter, however, though it properly extend not to any general decision of the law, is certainly not bounded, at least in modern times, to a mere estimate of the truth of testimony. The intention of the litigant parties in civil matters, of the accused in crimes, is in every case a matter of inference from the testimony or from the acknowledged facts of the case; and wherever that intention is material to the issue, is constantly left for the jury's deliberation. Unfortunately, it has been sometimes the disposition of judges to claim to themselves the absolute interpretation of facts, and the exclusive right of drawing inferences from them, as it has occasionally, though not, perhaps, with so much danger, been the failing of juries to make their right of returning a general verdict subservient to faction or prejudice. Vaughan did not, of course, mean to encourage any petulance in juries that should lead them to pronounce on the law, nor does he expatiate so largely on their power as has sometimes since been usual; but confines himself to a narrow, though conclusive, line of argument, that, as every issue of fact must be supported by testimony, upon the truth of which the jury are exclusively to decide, they can not be guilty of any legal misdemeanor in returning their verdict, though apparently against the direction of the court in point of law; since it can not ever be proved that they believed the evidence upon which that direction must have rested.

§ 8. I have already pointed out to the reader's notice that article of Clarendon's impeachment which charges him with having caused many persons to be imprisoned against law. These were released by the duke of Buckingham's administration, which in several respects acted on a more liberal principle than any other in this reign. The practice was not, however, wholly discontinued. Jenkes, a citizen of London on the popular or factious side, having been committed by the king in council for a mutinous speech in Guildhall, the justices at quarter sessions refused to admit him to bail, on pretense that he had been committed by a superior court; or to try him, because he was not entered in the calendar of prisoners. The chancellor, on application for a habeas corpus, declined to issue it during the vacation; and the chief-justice of the king's bench, to whom, in the next place, the friends of Jenkes had recourse, made so many difficulties that

he lay in prison for several weeks. This has been commonly said to have produced the famous act of habeas corpus. But this is not truly stated. The arbitrary proceedings of lord Clarendon were what really gave rise to it. A bill to prevent the refusal of the writ of habeas corpus was brought into the house on April 10, 1668, but did not pass the committee in that session. But another to the same purpose, probably more remedial, was sent up to the lords in March, 1669–70. It failed of success in the upper house; but the commons continued to repeat their struggle for this important measure, and in the session of 1673–4 passed two bills—one to prevent the imprisonment of the subject in jails beyond the seas, another to give a more expeditious use of the writ of habeas corpus in criminal matters. The same or similar bills appear to have gone up to the lords in 1675. It was not till 1676 that the delay of Jenkes's habeas corpus took place. And this affair seems to have had so trifling an influence that these bills were not revived for the next two years, notwithstanding the tempests that agitated the house during that period. But in the short parliament of 1679 they appear to have been consolidated into one, that, having met with better success among the lords, passed into a statute, and is generally denominated the habeas corpus act.

It is a very common mistake, and that not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected, to suppose that this statute of Charles II. enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principle, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge or conviction, or for a civil debt. In the former case it was always in his power to demand of the court of king's bench a writ of habeas corpus ad subjiciendum, directed to the person detaining him in custody, by which he was enjoined to bring up the body of the prisoner, with the warrant of commitment, that the court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him, according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided in Magna Charta (if indeed it were not much more ancient), that the statute of Charles II. was enacted, but to cut off the

abuses by which the government's lust of power, and the servile subtlety of crown lawyers, had impaired so fundamental a privilege.

There had been some doubts whether the court of common pleas could issue this writ; and the court of exchequer seems never to have done so. It was also a question, and one of more importance, as we have seen in the case of Jenkes, whether a single judge of the court of king's bench could issue it during the vacation. The statute, therefore, enacts that where any person, other than persons convicted or in execution upon legal process, stands committed for any crime, except for treason or felony plainly expressed in the warrant of commitment, he may during the vacation complain to the chancellor, or any of the twelve judges, who, upon sight of a copy of the warrant, or an affidavit that a copy is denied, shall award a habeas corpus directed to the officer in whose custody the party shall be, commanding him to bring up the body of his prisoner within a time limited according to the distance, but in no case exceeding twenty days, who shall discharge the party from imprisonment, taking surety for his appearance in the court wherein his offense is cognizable. A jailer refusing a copy of the warrant of commitment, or not obeying the writ, is subjected to a penalty of £100; and even the judge denying a habeas corpus, when required according to this act, is made liable to a penalty of £500, at the suit of the injured party. The court of king's bench had already been accustomed to send out their writ of habeas corpus into all places of peculiar and privileged jurisdiction, where this ordinary process does not run, and even to the island of Jersey, beyond the strict limits of the kingdom of England; and this power, which might admit of some question, is sanctioned by a declaratory clause of the present statute. Another section enacts, that "no subject of this realm that now is, or hereafter shall be, an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter shall be, within or without the dominions of his majesty, his heirs or successors," under penalties of the heaviest nature short of death which the law then knew, and an incapacity of receiving the king's pardon. The great rank of those who were likely to offend against this part of the statute was, doubtless, the cause of this unusual severity.

But as it might still be practicable to evade these remedial provisions by expressing some matter of treason or felony in the warrant of commitment, the judges not being empowered to inquire into the truth of the facts contained in it, a further security against any protracted detention of an innocent man is afforded by a provision of great importance —that every person committed for treason or felony, plainly and specially expressed in the warrant, may, unless he shall be indicted in the next term, or at the next sessions of general jail delivery after his commitment, be, on prayer to the court, released upon bail, unless it shall appear that the crown's witnesses could not be produced at that time; and if he shall not be indicted and tried in the second term or sessions of jail delivery, he shall be discharged.

The remedies of the habeas corpus act are so effectual that no man can possibly endure any long imprisonment on a criminal charge, nor would any minister venture to exercise a sort of oppression so dangerous to himself. But it should be observed that, as the statute is only applicable to cases of commitment on such a charge, every other species of restraint on personal liberty is left to the ordinary remedy as it subsisted before this enactment. Thus a party detained without any warrant must sue out his habeas corpus at common law; and this is at present the more usual occurrence. But the judges of the king's bench, since the statute, have been accustomed to issue this writ during the vacation in all cases whatsoever. A sensible difficulty has, however, been sometimes felt, from their incompetency to judge of the truth of a return made to the writ. For, though in cases within the statute the prisoner may always look to his legal discharge at the next sessions of jail delivery, the same redress might not always be obtained when he is not in custody of a common jailer. If the person, therefore, who detains any one in custody should think fit to make a return to the writ of habeas corpus, alleging matter sufficient to justify the party's restraint, yet false in fact, there would be no means, at least by this summary process, of obtaining relief. An attempt was made in 1757, after an examination of the judges by the house of lords as to the extent and efficiency of the habeas corpus at common law, to render their jurisdiction more remedial. It failed, however, for the time, of success; but a statute was enacted toward the end of the reign of George III.,[1] which not only extends the power of issuing the writ during the vacation, in cases not within the

[1] 56 G. III., c. 100.

act of Charles II., to all the judges, but enables the judge before whom the writ is returned to inquire into the truth of the facts alleged therein, and, in case they shall seem to him doubtful, to release the party in custody, on giving surety to appear in the court to which such judge shall belong, on some day in the ensuing term, when the court may examine by affidavit into the truths of the facts alleged in the return, and either remand or discharge the party, according to their discretion. It is also declared that a writ of habeas corpus shall run to any harbor or road on the coast of England, though out of the body of any county; in order, I presume, to obviate the doubts as to the effects of this remedy in a kind of illegal detention, more likely, perhaps, than any other to occur in modern times, on board of vessels upon the coast. Except a few of this description, it is very rare for a habeas corpus to be required in any case where the government can be presumed to have an interest.

§ 9. The reign of Charles II. was hardly more remarkable by the vigilance of the house of commons against arbitrary prerogative than by the warfare it waged against whatever seemed an encroachment or usurpation in the other house of parliament. It has been a peculiar happiness of our constitution that such dissensions have so rarely occurred. This is owing, in a great measure, to the happy graduation of ranks, which renders the elder and the younger sons of our nobility two links in the unsevered chain of society; the one trained in the school of popular rights, and accustomed, for a long portion of their lives, to regard the privileges of the house whereof they form a part, full as much as those of their ancestors; the other falling without hereditary distinction into the class of other commoners, and mingling the sentiments natural to their birth and family affections with those that are more congenial to the whole community. It is owing, also, to the wealth and dignity of those ancient families who would be styled noble in any other country, and who give an aristocratical character to the popular part of our legislature, and to the influence which the peers themselves, through the representation of small boroughs, are enabled to exercise over the lower house.

§ 10. The original constitution of England was highly aristocratical. The peers of this realm, when summoned to parliament (and on such occasions every peer was entitled to his writ), were the necessary counselors and coadjutors of the king in all the functions that appertain to a government. In granting money for the public service, in changing by

permanent statutes the course of the common law, they could only act in conjunction with the knights, citizens, and burgesses of the lower house of parliament. In redress of grievances, the lords assembled in parliament were competent, as we find in our records, to exercise the same high powers as the king's ordinary council, composed of his great officers, his judges, and perhaps some peers, was wont to do in the intervals of parliament. These two, the lords and the privy council, seem to have formed, in the session, one body or great council, wherein the latter had originally right of suffrage along with the former. In this judicial and executive authority the commons had at no time any more pretense to interfere than the council or the lords by themselves had to make ordinances, at least of a general and permanent nature, which should bind the subject to obedience. At the beginning of every parliament numerous petitions were presented to the lords, or to the king and lords (since he was frequently there in person, and always presumed to be so), complaining of civil injuries and abuse of power. These were generally indorsed by appointed receivers of petitions, and returned by them to the proper court whence relief was to be sought. For an immediate inquiry and remedy seem to have been rarely granted, except in cases of an extraordinary nature, when the law was defective, or could not easily be enforced by the ordinary tribunals, the shortness of sessions and multiplicity of affairs preventing the upper house of parliament from entering so fully into these matters as the king's council had leisure to do.

The ultimate jurisdiction of the house of lords, either by removing into it causes commenced in the lower courts, or by writ of error complaining of a judgment given therein, seems to have been as ancient, and founded on the same principle of a paramount judicial authority delegated by the crown, as that which they exercised upon original petitions. It is to be observed that the council or star-chamber did not pretend to any direct jurisdiction of this nature; no record was ever removed thither upon assignment of errors in an inferior court. The statute passed in 1585, constituting the court of exchequer chamber as an intermediate tribunal of appeal between the king's bench and the parliament, recognizes the jurisdiction of the latter—that is, of the house of lords—in the strongest terms. To this power, therefore, of determining in the last resort, upon writs of error from the courts of common law, no objection could possibly be maintained.

§ 11. The revolutionary spirit of the long parliament brought forward still higher pretensions, and obscured all the landmarks of constitutional privilege. As the commons took on themselves to direct the execution of their own orders, the lords, afraid to be jostled out of that equality to which they were now content to be reduced, asserted a similar claim at the expense of the king's prerogative. They returned to their own house on the Restoration with confused notions of their high jurisdiction, rather enhanced than abated by the humiliation they had undergone. Not content with ordering the estates of all peers to be restored, free from seizure by sequestration, and with all arrears of rent, we find in their journals that they did not hesitate, on petition, to stay waste on the estates of private persons, and to secure the tithes of livings from which ministers had been ejected, in the hands of the church-wardens till their title could be tried. They acted, in short, as if they had a plenary authority in matters of freehold right where any member of their own house was a party, and in every case as full and equitable jurisdiction as the court of chancery.

§ 12. The lower house of parliament, which hardly reckoned itself lower in dignity, and was something more than equal in substantial power, did not look without jealousy on these pretensions. This half-suppressed jealousy soon disclosed itself in the famous controversy between the two houses about the case of Skinner and the East India company. This began by a petition of the former to the king, wherein he complained that, having gone as a merchant to the Indian seas at a time when there was no restriction upon that trade, the East India company's agents had plundered his property, taken away his ships, and dispossessed him of an island which he had purchased from a native prince. Conceiving that he could have no sufficient redress in the ordinary courts of justice, he besought his sovereign to enforce reparation by some other means. After several ineffectual attempts by a committee of the privy council to bring about a compromise between the parties, the king transmitted the documents to the house of lords, with a recommendation to do justice to the petitioner. They proceeded, accordingly, to call on the East India company for an answer to Skinner's allegations. The company gave in what is technically called a plea to the jurisdiction, which the house overruled. The defendants then pleaded in bar, and contrived to delay the inquiry into the facts till the next session, when, the proceedings having been renewed, and

the plea to the lords' jurisdiction again offered and overruled, judgment was finally given that the East India company should pay £5000 damages to Skinner.

Meantime the company had presented a petition to the house of commons against the proceedings of the lords in this business. It was referred to a committee, who had already been appointed to consider some other cases of a like nature. They made a report, which produced resolutions to this effect — that the lords, in taking cognizance of an original complaint, and that relievable in the ordinary course of law, had acted illegally, and in a manner to deprive the subject of the benefit of the law. The lords, in return, voted that the proceedings of the house of commons were a breach of the privileges of the house of peers. The proceedings that followed were intemperate on both sides. The commons voted Skinner into custody for a breach of privilege, and resolved that whoever should be aiding in execution of the order of the lords against the East India company should be deemed a betrayer of the liberties of the commons of England, and an infringer of the privileges of the house. The lords, in return, committed sir Samuel Barnardiston, chairman of the company, and a member of the house of commons, to prison, and imposed on him a fine of £500. It became necessary for the king to stop the course of this quarrel, which was done by successive adjournments and prorogations for fifteen months. But on their meeting again, in October, 1669, the commons proceeded instantly to renew the dispute. In conclusion, the king recommended an erasure from the Journals of all that had passed on the subject, and an entire cessation; an expedient which both houses willingly embraced, the one to secure its victory, the other to save its honor. From this time the lords have tacitly abandoned all pretensions to an original jurisdiction in civil suits.

They have, however, been more successful in establishing a branch of their ultimate jurisdiction which had less to be urged for it in respect of precedent, that of hearing appeals from courts of equity. It is proved by sir Matthew Hale and his editor, Mr. Hargrave, that the lords did not entertain petitions of appeal before the reign of Charles I., and not, perhaps, unequivocally before the long parliament. They became very common from that time, though hardly more so than original suits; and, as they bore no analogy, except at first glance, to writs of error, which come to the house of lords by the king's express commission under the great seal, could not well be defended on legal grounds. But, on the

other hand, it was reasonable that the vast power of the court of chancery should be subject to some control; and if the ultimate jurisdiction of the peerage were convenient and salutary in cases of common law, it was difficult to assign any satisfactory reason why it should be less so in those which are technically denominated equitable. Nor is it likely that the commons would have disputed this usurpation, in which the crown had acquiesced, if the lords had not received appeals against members of the other house. Three instances of this took place about the year 1675; but that of Shirley against sir John Fagg is the most celebrated, as having given rise to a conflict between the two houses as violent as that which had occurred in the business of Skinner. It began altogether on the score of privilege. As members of the house of commons were exempted from legal process during the session, by the general privilege of parliament, they justly resented the pretension of the peers to disregard this immunity, and compel them to appear as respondents in cases of appeal. In these contentions neither party could evince its superiority but at the expense of innocent persons. It was a contempt of the one house to disobey its order, of the other to obey it. Four counsel, who had pleaded at the bar of the lords in one of the cases where a member of the other house was concerned, were taken into custody of the sergeant-at-arms by the speaker's warrant. The gentleman usher of the black-rod, by warrant of the lords, empowering him to call all persons necessary to his assistance, set them at liberty. The commons apprehended them again; and, to prevent another rescue, sent them to the Tower. The lords dispatched their usher of the black-rod to the lieutenant of the Tower, commanding him to deliver up the said persons. He replied that they were committed by order of the commons, and he could not release them without their order; just as, if the lords were to commit any person, he could not release him without their lordships' order. They addressed the king to remove the lieutenant; but, after some hesitation, he declined to comply with their desire. In this difficulty they had recourse, instead of the warrant of the lord's speaker, to a writ of habeas corpus returnable in parliament; a proceeding not usual, but the legality of which seems to be now admitted. The lieutenant of the Tower, who, rather unluckily for the lords, had taken the other side, either out of conviction or from a sense that the lower house were the stronger and more formidable, instead of obeying the writ, came to the bar of the commons for directions. They voted,

as might be expected, that the writ was contrary to law and the privileges of their house. But in this ferment of two jealous and exasperated assemblies, it was highly necessary, as on the former occasion, for the king to interpose by a prorogation for three months. This period, however, not being sufficient to allay their animosity, the house of peers took up again the appeal of Shirley in their next session. Fresh votes and orders of equal intemperance on both sides ensued, till the king, by the long prorogation, from November, 1675, to February, 1677, put an end to the dispute. The particular appeal of Shirley was never revived; but the lords continued without objection to exercise their general jurisdiction over appeals from courts of equity. The learned editor of Hale's "Treatise on the Jurisdiction of the Lords" expresses some degree of surprise at the commons' acquiescence in what they had treated as a usurpation. But it is evident from the whole course of proceeding that it was the breach of privilege in citing their own members to appear which excited their indignation.

§ 13. During the interval between these two dissensions, which the suits of Skinner and Shirley engendered, another difference had arisen, somewhat less violently conducted, but wherein both houses considered their essential privileges at stake. This concerned the long-agitated question of the right of the lords to make alterations in money bills. Though I can not but think the importance of their exclusive privilege has been rather exaggerated by the house of commons, it deserves attention, more especially as the embers of that fire may not be so wholly extinguished as never again to show some traces of its heat.

In our earliest parliamentary records, the lords and commons, summoned in a great measure for the sake of relieving the king's necessities, appear to have made their several grants of supply without mutual communication, and the latter generally in a higher proportion than the former. These were not in the form of laws, nor did they obtain any formal assent from the king, to whom they were tendered in written indentures, entered afterward on the roll of parliament. The latest instance of such distinct grants from the two houses, as far as I can judge from the rolls, is in the 18th year of Edward III. But in the 22d year of that reign the commons alone granted three-fifteenths of their goods, in such a manner as to show beyond a doubt that the tax was to be levied solely upon themselves. After this time the lords and commons are jointly recited in the rolls to have

granted them, sometimes, as it is expressed, upon deliberation had together. In one case it is said that the lords, with one assent, and afterward the commons, granted a subsidy on exported wool. A change of language is observable in Richard II.'s reign, when the commons are recited to grant with the assent of the lords; and this seems to indicate, not only that in practice the vote used to originate with the commons, but that their proportion, at least, of the tax being far greater than that of the lords (especially in the usual impositions on wool and skins, which ostensibly fell on the exporting merchant), the grant was to be deemed mainly theirs, subject only to the assent of the other house of parliament. This is, however, so explicitly asserted in a remarkable passage on the roll of 9 Hen. IV., without any apparent denial, that it can not be called in question by any one.[2] The language of the rolls continues to be the same in the following reigns; the commons are the granting, the lords the consenting power.

These grants continued to be made as before, by the consent, indeed, of the houses of parliament, but not as legislative enactments. Most of the few instances where they appear among the statutes are where some condition is annexed, or some relief of grievances so interwoven with them that they make part of a new law. In the reign of Henry VII. they are occasionally inserted among the statutes, though still without any enacting words. In that of Henry VIII. the form is rather more legislative, and they are said to be enacted by the authority of parliament. The lords and commons are sometimes both said to grant, but more frequently the latter with the former's assent, as continued to be the case through the reigns of Elizabeth and James I. In the first parliament of Charles I. the commons began to omit the name of the lords in the preamble of bills of supply, reciting the grant as if wholly their own, but in the enacting words adopted the customary form of statutes. This, though once remonstrated against by the upper house, has continued ever since to be the practice.

The originating power as to taxation was thus indubitably placed in the house of commons; nor did any controversy arise upon that ground. But they maintained, also, that the lords could not make any amendment whatever in bills sent up to them for imposing, directly or indirectly, a charge upon the people. There seems no proof that any difference between the two houses on this score had arisen be-

[2] Rot. Parl., iii., 611. Students' History of the Middle Ages, p. 443.

fore the Restoration; and in the convention parliament the lords made several alterations in undoubted money bills, to which the commons did not object. But in 1661, the lords having sent down a bill for paving the streets of Westminster, to which they desired the concurrence of the commons, the latter, on reading the bill a first time, "observing that it went to lay a charge upon the people, and conceiving that it was a privilege inherent in their house that bills of that nature should be first considered there," laid it aside, and caused another to be brought in. When this was sent up to the lords, they inserted a clause to which the commons disagreed, as contrary to their privileges, because the people can not have any tax or charge imposed upon them, but originally by the house of commons. The lords resolved this assertion of the commons to be against the inherent privileges of the house of peers; and the present bill was defeated by the unwillingness of either party to recede. In April, 1671, the lords having reduced the amount of an imposition on sugar, it was resolved by the other house, "That in all aids given to the king by the commons, the rate or tax ought not to be altered by the lords." This brought on several conferences between the houses, wherein the limits of the exclusive privilege claimed by the commons were discussed with considerable ability, but, as I can not help thinking, with a decided advantage both as to precedent and constitutional analogy on the side of the peers. If the commons, as in early times, had merely granted their own money, it would be reasonable that their house should have, as it claimed to have, "a fundamental right as to the matter, the measure, and the time." But that the peers, subject to the same burdens as the rest of the community, and possessing no trifling proportion of the general wealth, should have no other alternative than to refuse the necessary supplies of the revenue, or to have their exact proportion, with all qualifications and circumstances attending their grant, presented to them unalterably by the other house of parliament, was an anomaly that could hardly rest on any other ground of defense than such a series of precedents as establish a constitutional usage; while, in fact, it could not be made out that such a pretension was ever advanced by the commons before the present parliament.

§ 14. There seems to be still less pretext for the great extension given by the commons to their acknowledged privilege of originating bills of supply. The principle was well adapted to that earlier period when security against misgov-

ernment could only be obtained by the vigilant jealousy and uncompromising firmness of the commons. They came to the grant of subsidy with real or feigned reluctance, as the stipulated price of redress of grievances. They considered the lords, generally speaking, as too intimately united with the king's ordinary council, which, indeed, sat with them, and had, perhaps, as late as Edward III.'s time, a deliberate voice. They knew the influence or intimidating ascendency of the peers over many of their own members. It may be doubted, in fact, whether the lower house shook off, absolutely and permanently, all sense of subordination, or at least deference, to the upper, till about the close of the reign of Elizabeth. But I must confess, that when the wise and ancient maxim that the commons alone can empower the king to levy the people's money was applied to a private bill for lighting and cleansing a certain town, or cutting dikes in a fen, to local and limited assessments for local benefit (as to which the crown has no manner of interest, nor has any thing to do with the collection), there was more disposition shown to make encroachments than to guard against those of others. They began soon after the revolution to introduce a still more extraordinary construction of their privilege, not receiving from the house of lords any bill which imposes a pecuniary penalty on offenders, nor permitting them to alter the application of such as had been imposed below.[3]

These restrictions upon the other house of parliament, however, are now become, in their own estimation, the standing privileges of the commons. Several instances have occurred during the last century, though not, I believe, very lately, when bills, chiefly of a private nature, have been unanimously rejected, and even thrown over the table by the speaker, because they contained some provision in which the lords had trespassed upon these alleged rights. They are, as may be supposed, very differently regarded in the neighboring chamber. The lords have never acknowledged any further privilege than that of originating bills of supply.

[3] The principles laid down by Hatsell are: 1. That in bills of supply the lords can make no alteration but to correct verbal mistakes. 2. That in bills, not of absolute supply, yet imposing burdens, as turnpike acts, etc., the lords can not alter the quantum of the toll, the persons to manage it, etc.; but in other clauses they may make amendments. 3. That where a charge may indirectly be thrown on the people by a bill, the commons object to the lords making amendments. 4. That the lords can not insert pecuniary penalties in a bill, or alter those inserted by the commons (iii., 137). He seems to boast that the lords during the last century have very faintly opposed the claim of the commons. But surely they have sometimes done so in practice by returning a money bill, or what the lower house call one, amended; and the commons have had recourse to the evasion of throwing out such bill, and bringing in another with the amendments inserted in it, which does not look very triumphant.

But the good sense of both parties, and of an enlightened nation, who must witness and judge of their disputes, as well as the natural desire of the government to prevent in the outset any altercation that must impede the course of its measures, have rendered this little jealousy unproductive of those animosities which it seemed so happily contrived to excite. The one house, without admitting the alleged privilege, has generally been cautious not to give a pretext for eagerly asserting it; and the other, on trifling occasions where it has seemed, perhaps unintentionally, to be infringed, has commonly resorted to the moderate course of passing a fresh bill to the same effect, after satisfying its dignity by rejecting the first.

§ 15. It may not be improper to choose the present occasion for a summary view of the constitution of both houses of parliament under the lines of Tudor and Stuart. Of their earlier history the reader may find a brief and not, I believe, very incorrect account, in a work to which this is a kind of sequel.

The number of temporal lords summoned by writ to the parliaments of the house of Plantagenet was exceedingly various; nor was any thing more common in the fourteenth century than to omit those who had previously sat in person, and still more their descendants. They were rather less numerous, for this reason, under the line of Lancaster, when the practice of summoning those who were not hereditary peers did not so much prevail as in the preceding reigns. Fifty-three names, however, appear in the parliament of 1454, the last held before the commencement of the great contest between York and Lancaster. In this troublous period of above thirty years, if the whole reign of Edward IV. is to be included, the chiefs of many powerful families lost their lives in the field or on the scaffold, and their honors perished with them by attainder. New families, adherents of the victorious party, rose in their place; and sometimes an attainder was reversed by favor; so that the peers of Edward's reign were not much fewer than the number I have mentioned. Henry VII. summoned but 29 to his first parliament, including some whose attainder had never been judicially reversed; a plain act of violence, like his previous usurpation of the crown. In his subsequent parliaments the peerage was increased by fresh creations, but never much exceeded 40. The greatest number summoned by Henry VIII. was 51; which continued to be nearly the average in the two next reigns, and was very little augmented by Elizabeth.

James, in his thoughtless profusion of favor, made so many new creations, that 82 peers sat in his first parliament, and 96 in his latest. From a similar facility in granting so cheap a reward of service, and in some measure, perhaps, from the policy of counteracting a spirit of opposition to the court, which many of the lords had begun to manifest, Charles called no less than 117 peers to the parliament of 1628, and 119 to that of November, 1640. Many of these honors were sold by both these princes; a disgraceful and dangerous practice, unheard of in earlier times, by which the princely peerage of England might have been gradually leveled with the herd of foreign nobility. This has occasionally, though rarely, been suspected since the Restoration. In the parliament of 1661 we find 139 lords summoned.

The spiritual lords, who, though forming another estate in parliament, have always been so united with the temporality that the suffrages of both upon every question are told indistinctly and numerically, composed in general, before the Reformation, a majority of the upper house; though there was far more irregularity in the summonses of the mitred abbots and priors than those of the barons. But by the surrender and dissolution of the monasteries, about thirty-six votes of the clergy, on an average, were withdrawn from the parliament; a loss ill compensated to them by the creation of five new bishoprics. Thus, the number of the temporal peers being continually augmented, while that of the prelates was confined to 26, the direct influence of the church on the legislature has become comparatively small; and that of the crown, which, by the pernicious system of translations and other means, is generally powerful with the episcopal bench, has, in this respect at least, undergone some diminution. It is easy to perceive, from this view of the case, that the destruction of the monasteries, as they then stood, was looked upon as an indispensable preliminary to the Reformation; no peaceable efforts toward which could have been effectual without altering the relative proportions of the spiritual and temporal aristocracy.

The house of lords, during this period of the sixteenth and seventeenth centuries, were not supine in rendering their collective and individual rights independent of the crown. It became a fundamental principle, according, indeed, to ancient authority, though not strictly observed in ruder times, that every peer of full age is entitled to his writ of summons at the beginning of a parliament, and that the house will not proceed on business if any one is denied it. The privi-

lege of voting by proxy, which was originally by special permission of the king, became absolute, though subject to such limitations as the house itself may impose. The writ of summons, which, as I have observed, had in earlier ages (if usage is to determine that which can rest on nothing but usage) given only a right of sitting in the parliament for which it issued, was held, about the end of Elizabeth's reign, by a construction founded on later usage, to convey an inheritable peerage, which was afterward adjudged to descend upon heirs general, female as well as male; an extension which sometimes raises intricate questions of descent, and, though no materially bad consequences have flowed from it, is perhaps one of the blemishes in the constitution of parliament. Doubts whether a peerage could be surrendered to the king, and whether a territorial honor, of which hardly any remain, could be alienated along with the land on which it depended, were determined in the manner most favorable to the dignity of the aristocracy. They obtained also an important privilege; first of recording their dissent in the journals of the house, and afterward of inserting the grounds of it. Instances of the former occur not unfrequently at the period of the Reformation; but the latter practice was little known before the long parliament—a right that Cato or Phocion would have prized, though it may sometimes have been frivolously or factiously exercised!

§ 16. The house of commons, from the earliest records of its regular existence in the 23d year of Edward I., consisted of 74 knights, or representatives from all the counties of England, except Chester, Durham, and Monmouth, and of a varying number of deputies from the cities and boroughs; sometimes, in the earliest period of representation, amounting to as many as 260; sometimes, by the negligence or partiality of the sheriffs in omitting places that had formerly returned members, to not more than two-thirds of that number. New boroughs, however, as being grown into importance, or from some private motive, acquired the franchise of election; and at the accession of Henry VIII. we find 224 citizens and burgesses from 111 towns (London sending four), none of which have since intermitted their privilege.

The change which appears to have taken place in the English government toward the end of the thirteenth century was founded upon the maxim that all who possessed landed or movable property ought, as freemen, to be bound by no laws, and especially by no taxation, to which they had not consented through their representatives. If we look at the

constituents of a house of commons under Edward I. or Edward III., and consider the state of landed tenures and of commerce at that period, we shall perceive that, excepting women, who have generally been supposed capable of no political right but that of reigning, almost every one who contributed toward the tenths and fifteenths granted by the parliament might have exercised the franchise of voting for those who sat in it. I do not pretend that no one was contributory to a subsidy who did not possess a vote, but that the far greater portion was levied on those who, as freeholders or burgesses, were reckoned in law to have been consenting to its imposition. It would be difficult, probably, to name any town of the least consideration in the fourteenth and fifteenth centuries which did not, at some time or other, return members to parliament. This is so much the case, that if, in running our eyes along the map, we find any sea-port, as Sunderland or Falmouth, or any inland town, as Leeds or Birmingham, which had never enjoyed the elective franchise, we may conclude at once that it has emerged from obscurity since the reign of Henry VIII.[4]

Though scarce any considerable town, probably, was intentionally left out, except by the sheriff's partiality, it is not to be supposed that all boroughs that made returns were considerable. Several that are currently said to be decayed were never much better than at present. Some of these were the ancient demesne of the crown; the tenants of which, not being suitors to the county courts, nor voting in the election of knights for the shire, were, still on the same principle of consent to public burdens, called upon to send their own representatives. Others received the privilege along with their charter of incorporation, in the hope that they would thrive more than proved to be the event; and possibly, even in such early times, the idea of obtaining influence in the commons through the votes of their burgesses might sometimes suggest itself.

That, amidst all this care to secure the positive right of representation, so little provision should have been made as to its relative efficiency, that the high-born and opulent gentry should have been so vastly outnumbered by peddling traders, that the same number of two should have been deemed sufficient for the counties of York and Rutland, for Bristol and Gatton, are facts more easy to wonder at than

[4] Though the proposition in the text is, I believe, generally true, it has occurred to me since that there are some exceptions in the northern parts of England; and that both Sheffield and Manchester are among them.

to explain; for though the total ignorance of the government as to the relative population might be, perhaps, a sufficient reason for not making an attempt at equalization, yet, if the representation had been founded on any thing like a numerical principle, there would have been no difficulty in reducing it to the proportion furnished by the books of subsidy for each county and borough, or at least in a rude approximation toward a more rational distribution.

Henry VIII. gave a remarkable proof that no part of the kingdom, subject to the English laws and parliamentary burdens, ought to want its representation, by extending the right of election to the whole of Wales, the counties of Chester and Monmouth, and even the towns of Berwick and Calais. It might be possible to trace the reason why the county of Durham was passed over. The attachment of those northern parts to popery seems as likely as any other. Thirty-three were thus added to the commons. Edward VI. created fourteen boroughs, and restored ten that had disused their privilege. Mary added twenty-one, Elizabeth sixty, and James twenty-seven members.

These accessions to the popular chamber of parliament after the reign of Henry VIII. were by no means derived from a popular principle, such as had influenced its earlier constitution. We may account, perhaps, on this ground for the writs addressed to a very few towns, such as Westminster. But the design of that great influx of new members from petty boroughs, which began in the short reigns of Edward and Mary, and continued under Elizabeth, must have been to secure the authority of government, especially in the successive revolutions of religion. Five towns only in Cornwall made returns at the accession of Edward VI.; twenty-one at the death of Elizabeth. It will not be pretended that these wretched villages were seats of commerce and industry in the sixteenth century. But the county of Cornwall was more immediately subject to a coercive influence, through the indefinite and oppressive jurisdiction of the stannary court. Similar motives, if we could discover the secrets of those governments, doubtless operated in most other cases. A slight difficulty seems to have been raised in 1563 about the introduction of representatives from eight new boroughs at once by charters from the crown, but was soon waived with the complaisance usual in those times. Many of the towns which had abandoned their privilege at a time when they were compelled to the payment of daily wages to their members during the session, were now desirous of recovering it

when that burden had ceased and the franchise had become valuable. And the house, out of favor to popular rights, laid it down in the reign of James I. as a principle, that every town which has at any time returned members to parliament is entitled to a writ as a matter of course. The speaker accordingly issued writs to Hertford, Pomfret, Ilchester, and some other places, on their petition. The restorations of boroughs in this manner, down to 1641, are fifteen in number. Charles I., whose temper inspired him rather with a systematic abhorrence of parliaments than with any notion of managing them by influence, created no new boroughs. The right, indeed, would certainly have been disputed, however frequently exercised. In 1673, the county and city of Durham, which had strangely been unrepresented to so late an era, were raised by act of parliament to the privileges of their fellow-subjects. About the same time a charter was granted to the town of Newark, enabling it to return two burgesses. It passed with some little objection at the time; but four years afterward, after two debates, it was carried on the question, by 125 to 73, that, by virtue of the charter granted to the town of Newark, it hath right to send burgesses to serve in parliament. Notwithstanding this apparent recognition of the king's prerogative to summon burgesses from a town not previously represented, no later instance of its exercise has occurred; and it would unquestionably have been resisted by the commons, not, as is vulgarly supposed, because the act of union with Scotland has limited the English members to 513 (which is not the case), but upon the broad maxims of exclusive privilege in matters relating to their own body, which the house was become powerful enough to assert against the crown.

§ 17. It is doubtless a problem of no inconsiderable difficulty to determine with perfect exactness by what class of persons the elective franchise in ancient boroughs was originally possessed. The different opinions on this controverted question may be reduced to the four following theses: 1. The original right, as enjoyed by boroughs represented in the parliaments of Edward I., and all of later creation, where one of a different nature has not been expressed in the charter from which they derive the privilege, was in the inhabitant householders resident in the borough, and paying scot and lot; under those words including local rates, and probably general taxes. 2. The right sprang from the tenure of certain freehold lands or burgages within the borough, and did not belong to any but such tenants. 3. It was derived from char-

ters of incorporation, and belonged to the community or freemen of the corporate body. 4. It did not extend to the generality of freemen, but was limited to the governing part or municipal magistracy.

Of these propositions, the first was laid down by a celebrated committee of the house of commons in 1624, the chairman whereof was sergeant Glanville, and the members, as appears by the list in the Journals, the most eminent men, in respect of legal and constitutional knowledge, that were ever united in such a body. It is called by them the common-law right, and that which ought always to obtain where prescriptive usage to the contrary can not be shown. But it has met with very little favor from the house of commons since the Restoration. The second has the authority of lord Holt in the case of Ashby and White, and of some other lawyers who have turned their attention to the subject. It countenances what is called the right of burgage tenure; the electors in boroughs of this description being such as hold burgages or ancient tenements within the borough. The next theory, which attaches the primary franchise to the freemen of corporations, has, on the whole, been most received in modern times, if we look either at the decisions of the proper tribunal, or the current doctrine of lawyers. The last proposition is that of Dr. Brady, who, in a treatise of boroughs, written to serve the purposes of James II., though not published till after the Revolution, endeavored to settle all elective rights on the narrowest and least popular basis. This work gained some credit, which its perspicuity and acuteness would deserve, if these were not disgraced by a perverse sophistry and suppression of truth.[5]

[5] It is unnecessary now to discuss these propositions, as the Reform bills of 1832 and 1867 have of course rendered a disquisition on the ancient rights of election in boroughs a matter of merely historical interest.

CHAPTER XIV.

THE REIGN OF JAMES II.

§ 1. Designs of the King. § 2. Parliament of 1685. § 3. King's Intention to repeal the Test Act. § 4. Deceived as to the Dispositions of his Subjects. § 5. First Period of his Reign. Prorogation of Parliament. § 6. Second Period of his Reign. § 7. Dispensing Power confirmed by the Judges. § 8. Ecclesiastical Commission. § 9. King's Scheme of establishing Popery. § 10. Dismissal of Lord Rochester. § 11. Prince of Orange alarmed. Plan of setting the Princess aside. Rejected by the King. Overtures of the Malcontents to Prince of Orange. § 12. Declaration for Liberty of Conscience. § 13. Addresses in Favor of it. § 14. New modeling of the Corporations. § 15. Affair of Magdalen College. § 16. Infatuation of the King. § 17. His Coldness toward Louis. § 18. Invitation signed to the Prince of Orange. Birth of Prince of Wales. § 19. Justice and Necessity of the Revolution. § 20. Favorable Circumstances attending it. § 21. Its salutary Consequences. § 22. Proceedings of the Convention. § 23. Ended by the Elevation of William and Mary to the Throne.

§ 1. THE question concerning the right and usage of election in boroughs was perhaps of less practical importance in the reign of Charles II. than we might at first imagine. Whoever might be the legal electors, it is undoubted that a great preponderance was virtually lodged in the select body of corporations. It was the knowledge of this that produced the corporation act soon after the Restoration, to exclude the presbyterians, and the more violent measures of quo warranto at the end of Charles's reign. If by placing creatures of the court in municipal offices, or by intimidating the former corporators through apprehensions of forfeiting their common property and lucrative privileges, what was called a loyal parliament could be procured, the business of government, both as to supply and enactment or repeal of laws, would be carried on far more smoothly and with less scandal than by their entire disuse. Few of those who assumed the name of tories were prepared to sacrifice the ancient fundamental forms of the constitution. They thought it equally necessary that a parliament should exist, and that it should have no will of its own, or none, at least, except for the preservation of that ascendency of the established religion which even their loyalty would not consent to surrender.

It is not easy to determine whether James II. had resolved to complete his schemes of arbitrary government by setting aside even the nominal concurrence of the two houses of parliament in legislative enactments, and especially in levying money on his subjects. He could hardly avoid perceiv-

ing that the constant acquiescence of an English house of commons in the measures proposed to it, a respectful abstinence from all intermeddling with the administration of affairs, could never be relied upon or obtained at all, without much of that dexterous management and influence which he thought it both unworthy and impolitic to exert. It seems clearly that he had determined on trying their obedience merely as an experiment, and by no means to put his authority in any manner within their control. Hence he took the bold step of issuing a proclamation for the payment of customs, which by law expired at the late king's death; and Barillon mentions several times that he was resolved to continue in the possession of the revenue, whether the parliament should grant it or no. He was equally decided not to accept it for a limited time. This, as his principal ministers told the ambassadors, would be to establish the necessity of convoking parliament from time to time, and thus to change the form of government by rendering the king dependent upon it, rather than which it would be better to come at once to the extremity of a dissolution, and maintain the possession of the late king's revenues by open force. But the extraordinary conduct of this house of commons, so unlike any that had met in England for the last century, rendered any exertion of violence on this score quite unnecessary.

§ 2. The behavior of that unhonored parliament, which held its two short sessions in 1685, though in a great measure owing to the fickleness of the public mind and rapid ascendency of tory principles during the late years, as well as to a knowledge of the king's severe and vindictive temper, seems to confirm the assertion strongly made at the time within its walls, that many of the members had been unduly returned. The notorious facts, indeed, as to the forfeiture of corporations throughout the kingdom, and their re-grant under such restrictions as might serve the purpose of the crown, stand in need of no confirmation. Those who look at the debates and votes of this assembly, their large grant of a permanent revenue to the annual amount of two millions, rendering a frugal prince, in time of peace, entirely out of all dependence on his people; their timid departure from a resolution taken to address the king on the only matter for which they were really solicitous, the enforcement of the penal laws, on a suggestion of his displeasure; their bill entitled, "For the preservation of his majesty's person," full of dangerous innovations in the law of treason, especially one most unconstitutional clause, that any one moving in ei-

ther house of parliament to change the descent of the crown should incur the penalties of that offense; their supply of £700,000, after the suppression of Monmouth's rebellion, for the support of a standing army, will be inclined to believe that, had James been as zealous for the church of England as his father, he would have succeeded in establishing a power so nearly despotic, that neither the privileges of parliament, nor much less those of private men, would have stood in his way. The prejudice which the two last Stuarts had acquired in favor of the Roman religion, so often deplored by thoughtless or insidious writers as one of the worst consequences of their father's ill fortune, is to be accounted rather among the most signal links in the chain of causes through which a gracious Providence has favored the consolidation of our liberties and welfare. Nothing less than a motive more universally operating than the interests of civil freedom would have stayed the compliant spirit of this unworthy parliament, or rallied, for a time at least, the supporters of indefinite prerogative under a banner they abhorred. We know that the king's intention was to obtain the repeal of the habeas corpus act, a law which he reckoned as destructive of monarchy as the test was of the catholic religion. And I see no reason to suppose that he would have failed of this, had he not given alarm to his high-church parliament by a premature manifestation of his design to fill the civil and military employments with the professors of his own mode of faith.

§ 3. It has been doubted by Mr. Fox whether James had, in this part of his reign, conceived the projects commonly imputed to him, of overthrowing, or injuring by any direct acts of power, the protestant establishment of this kingdom. It is probable that nothing further was intended than to emancipate the Roman catholics from the severe restrictions of the penal laws, securing the public exercise of their worship from molestation, and to replace them upon an equality as to civil offices by abrogating the test act of the late reign. The king would rely on the intrinsic excellence of his own religion, and still more on the temptations that his favor would hold out. For the repeal of the test would not have placed the two religions on a fair level. Catholics, however little qualified, would have filled, as in fact they did under the dispensing power, most of the principal stations in the court, law, and army. The king told Barillon he was well enough acquainted with England to be assured that the admissibility to office would make more catholics than the right

of saying mass publicly. There was, on the one hand, a prevailing laxity of principle in the higher ranks, and a corrupt devotedness to power for the sake of the emoluments it could dispense, which encouraged the expectation of such a nominal change in religion as had happened in the sixteenth century. And, on the other, much was hoped by the king from the church itself. He had separated from her communion in consequence of the arguments which her own divines had furnished; he had conversed with men bred in the school of Laud; and was slow to believe that the conclusions which he had, not perhaps unreasonably, derived from the semi-protestant theology of his father's reign, would not appear equally irresistible to all minds when free from the danger and obloquy that had attended them. Thus, by a voluntary return of the clergy and nation to the bosom of the catholic church, he might both obtain an immortal renown, and secure his prerogative against that religious jealousy which had always been the aliment of political factions. Till this revolution, however, could be brought about, he determined to court the church of England, whose boast of exclusive and unlimited loyalty could hardly be supposed entirely hollow, in order to obtain the repeal of the penal laws and disqualifications which affected that of Rome. And though the maxims of religious toleration had been always in his mouth, he did not hesitate to propitiate her with the most acceptable sacrifice, the persecution of non-conforming ministers. He looked upon the dissenters as men of republican principles; and if he could have made his bargain for the free exercise of the catholic worship, I see no reason to doubt that he would never have announced his general indulgence to tender consciences.

§ 4. But James had taken too narrow a view of the mighty people whom he governed. The laity of every class, the tory gentleman almost equally with the presbyterian artisan, entertained an inveterate abhorrence of the Romish superstition. This was of course enhanced by the insolent and injudicious confidence of the Romish faction, especially the priests, in their demeanor, their language, and their publications. Meanwhile, a considerable change had been wrought in the doctrinal system of the Anglican church since the Restoration. The men most conspicuous in the reign of Charles II. for their writings, and for their argumentative eloquence in the pulpit, were of the class who had been denominated Latitudinarian divines; and, while they maintained the principles of the Remonstrants in opposition to the school of

Calvin, were powerful and unequivocal supporters of the protestant cause against Rome. They made none of the dangerous concessions which had shaken the faith of the duke and duchess of York; they regretted the disuse of no superstitious ceremony; they denied not the one essential characteristic of the Reformation, the right of private judgment; they avoided the mysterious jargon of a real presence in the Lord's Supper. Thus such an agreement between the two churches as had been projected at different times was become far more evidently impracticable, and the separation more broad and defined. These men, as well as others who do not properly belong to the same class, were now distinguished by their courageous and able defenses of the Reformation. The victory, in the judgment of the nation, was wholly theirs. Rome had, indeed, her proselytes, but such as it would have been more honorable to have wanted. The people heard sometimes with indignation, or rather with contempt, that an unprincipled minister, a temporizing bishop, or a licentious poet, had gone over to the side of a monarch who made conformity with his religion the only certain path to his favor.

§ 5. The short period of a four years' reign may be divided by several distinguishing points of time, which mark so many changes in the posture of government. From the king's accession to the prorogation of parliament on November 30, 1685, he had acted apparently in concurrence with the same party that had supported him in his brother's reign, of which his own seemed the natural and almost undistinguishable continuation. This party, which had become incomparably stronger than the opposite, had greeted him with such unbounded professions, the temper of its representatives had been such in the first session of parliament, that a prince less obstinate than James might have expected to succeed in attaining an authority which the nation seemed to offer. A rebellion speedily and decisively quelled confirms every government; it seemed to place his own beyond hazard. Could he have been induced to change the order of his designs, and accustom the people to a military force, and to a prerogative of dispensing with statutes of temporal concern, before he meddled too ostensibly with their religion, he would possibly have gained both the objects of his desire. Even conversions to popery might have been more frequent, if the gross solicitations of the court had not made them dishonorable. But, neglecting the hint of a prudent adviser, that the death of Monmouth left a far more dangerous enemy behind, he suf-

fered a victory that might have insured him success to inspire an arrogant confidence that led on to destruction. Master of an army, and determined to keep it on foot, he naturally thought less of a good understanding with parliament. He had already rejected the proposition of employing bribery among the members, an expedient very little congenial to his presumptuous temper and notions of government. They were assembled, in his opinion, to testify the nation's loyalty, and thankfulness to their gracious prince for not taking away their laws and liberties. But, if a factious spirit of opposition should once prevail, it could not be his fault if he dismissed them till more becoming sentiments should again gain ground. Hence he did not hesitate to prorogue, and eventually to dissolve, the most compliant house of commons that had been returned since his family had sat on the throne, at the cost of £700,000, a grant of supply which thus fell to the ground, rather than endure any opposition on the subject of the test and penal laws. Yet, from the strength of the court in all divisions, it must seem not improbable to us that he might, by the usual means of management, have carried both of those favorite measures, at least through the lower house of parliament. For the crown lost the most important division only by one vote, and had in general a majority. The very address about unqualified officers, which gave the king such offense as to bring on a prorogation, was worded in the most timid manner; the house having rejected unanimously the words first inserted by their committee, requesting that his majesty would be pleased not to continue them in their employments, for a vague petition that "he would be graciously pleased to give such directions that no apprhensions or jealousies may remain in the hearts of his majesty's good and faithful subjects."

§ 6. The second period of this reign extends from the prorogation of parliament to the dismissal of the earl of Rochester from the treasury in 1686. During this time, James, exasperated at the reluctance of the commons to acquiesce in his measures, and the decisive opposition of the church, threw off the half restraint he had imposed on himself; and showed plainly that, with a bench of judges to pronounce his commands, and an army to enforce them, he would not suffer the mockery of constitutional limitations to stand any longer in his way. Two important steps were made this year toward the accomplishment of his designs, by the judgment of the court of king's bench in the case of sir Edward Hales, confirming the right of the crown to dispense with

the test act, and by the establishment of the new ecclesiastical commission.

§ 7. The kings of England, if not immemorially, yet from a very early era in our records, have exercised a prerogative unquestioned by parliament, and recognized by courts of justice, that of granting dispensations from the prohibitions and penalties of particular laws. The language of ancient statutes was usually brief and careless, with few of those attempts to regulate prospective contingencies, which, even with our pretended modern caution, are so often imperfect; and, as the sessions were never regular, sometimes interrupted for several years, there was a kind of necessity, or great convenience, in deviating occasionally from the rigor of a general prohibition; more often, perhaps, some motive of interest or partiality would induce the crown to infringe on the legal rule. This dispensing power, however, grew up, as it were, collaterally to the sovereignty of the legislature, which it sometimes appeared to overshadow. It was, of course, asserted in large terms by councilors of state, and too frequently by the interpreters of law. Lord Coke, before he had learned the bolder tone of his declining years, lays it down, that no act of parliament can bind the king from any prerogative which is inseparable from his person, so that he may not dispense with it by a non obstante; such is his sovereign power to command any of his subjects to serve him for the public weal, which solely and inseparably is annexed to his person, and can not be restrained by any act of parliament. Thus, although the statute 23 H. VI., c. 8, provides that all patents to hold the office of sheriff for more than one year shall be void, and even enacts that the king shall not dispense with it, yet it was held by all the judges in the reign of Henry VII., that the king may grant such a patent for a longer term on good grounds, whereof he alone is the judge. So also the statutes which restrain the king from granting pardons in case of murder have been held void; and doubtless the constant practice has been to disregard them.

This high and dangerous prerogative, nevertheless, was subject to several limitations, which none but the grosser flatterers of monarchy could deny. It was agreed among lawyers that the king could not dispense with the common law, nor with any statute prohibiting that which was *malum in se*, nor with any right or interest of a private person or corporation. The rules, however, were still rather complicated, the boundaries indefinite, and therefore varying ac-

cording to the political character of the judges. For many years dispensations had been confined to taking away such incapacity as either the statutes of a college, or some law of little consequence, perhaps almost obsolete, might happen to have created. But when a collusive action was brought against Sir Edward Hales, a Roman catholic, in the name of his servant, to recover the penalty of £500 imposed by the test act, for accepting the commission of colonel of a regiment, without the previous qualification of receiving the sacrament in the church of England, the whole importance of the alleged prerogative became visible, and the fate of the established constitution seemed to hang upon the decision. The plaintiff's advocate, Northey, was known to have received his fee from the other side, and was thence suspected, perhaps unfairly, of betraying his own cause; but the chief-justice Herbert showed that no arguments against this prerogative would have swayed his determination. Not content with treating the question as one of no difficulty, he grounded his decision in favor of the defendant upon principles that would extend far beyond the immediate case. He laid it down that the kings of England were sovereign princes; that the laws of England were the king's laws; that it was consequently an inseparable prerogative of the crown to dispense with penal laws in particular cases, for reasons of which it was the sole judge. This he called the ancient remains of the sovereign power and prerogative of the kings of England, which never yet was taken from them, nor could be. There was no law, he said, that might not be dispensed with by the supreme lawgiver (meaning evidently the king, since the proposition would otherwise be impertinent); though he made a sort of distinction as to those which affected the subject's private right. But the general maxims of slavish churchmen and lawyers were asserted so broadly, that a future judge would find little difficulty in making use of this precedent to justify any stretch of arbitrary power.

It is by no means evident that the decision in this particular case of Hales, which had the approbation of eleven judges out of twelve, was against law. The course of former precedents seems rather to furnish its justification. But the less untenable such a judgment in favor of the dispensing power might appear, the more necessity would men of reflection perceive of making some great change in the relations of the people toward their sovereign. A prerogative of setting aside the enactments of parliament, which in tri-

fling matters, and for the sake of conferring a benefit on individuals, might be suffered to exist with little mischief, became intolerable when exercised in contravention of the very principle of those statutes which had been provided for the security of fundamental liberties or institutions. Thus the test act, the great achievement, as it had been reckoned, of the protestant party, for the sake of which the most subservient of parliaments had just then ventured to lose the king's favor, became absolutely nugatory and ineffective, by a construction which the law itself did not reject. Nor was it easy to provide any sufficient remedy by means of parliament; since it was the doctrine of the judges that the king's inseparable and sovereign prerogatives in matters of government could not be taken away or restrained by statute. The unadvised assertion in a court of justice of this principle, which though not by any means novel, had never been advanced in a business of such universal concern and interest, may be said to have sealed the condemnation of the house of Stuart. It made the co-existence of an hereditary line, claiming a sovereign prerogative paramount to the liberties they had vouchsafed to concede, incompatible with the security or probable duration of those liberties. This incompatibility is the true basis of the Revolution in 1688.

§ 8. But, whatever pretext the custom of centuries or the authority of compliant lawyers might afford for these dispensations from the test, no legal defense could be made for the ecclesiastical commission of 1686. The high-commission court of Elizabeth had been altogether taken away by an act of the long parliament, which went on to provide that no new court should be erected with the like power, jurisdiction, and authority. Yet the commission issued by James II. followed very nearly the words of that which had created the original court under Elizabeth, omitting a few particulars of little moment. It is not known, I believe, at whose suggestion the king adopted this measure. The pre-eminence reserved by the commission to Jefferies, whose presence was made necessary to all their meetings, and the violence with which he acted in all their transactions on record, seem to point him out as its great promoter; though it is true that, at a later period, Jefferies seems to have perceived the destructive indiscretion of the popish counselors. It displayed the king's change of policy and entire separation from that high-church party to whom he was indebted for the throne, since the manifest design of the ecclesiastical commission was to bridle the clergy, and silence the voice

of protestant zeal. The proceedings against the bishop of London, and other instances of hostility to the established religion, are well known.

§ 9. Elated by success and general submission, exasperated by the reluctance and dissatisfaction of those on whom he had relied for an active concurrence with his desires, the king seems at least by this time to have formed the scheme of subverting, or impairing so far as possible, the religious establishment. He told Barillon, alluding to the ecclesiastical commission, that God had permitted all the statutes which had been enacted against the catholic religion to become the means of its re-establishment. But the most remarkable evidence of this design was the collation of Massey, a recent convert, to the deanery of Christ Church, with a dispensation from all the statutes of uniformity and other ecclesiastical laws, so ample that it made a precedent, and such it was doubtless intended to be, for bestowing any benefices upon members of the church of Rome. This dispensation seems to have been not generally known at the time.

§ 10. A deeper impression was made by the dismissal of Rochester from his post of lord-treasurer; so nearly consequent on his positive declaration of adherence to the protestant religion, after the dispute held in his presence at the king's particular command, between divines of both persuasions, that it had much the appearance of a resolution taken at court to exclude from the high offices of the state all those who gave no hope of conversion. Clarendon had already given way to Tyrconnel in the government of Ireland; the privy seal was bestowed on a catholic peer, lord Arundel; lord Bellasis, of the same religion, was now placed at the head of the commission of the treasury; Sunderland, though he did not yet cease to conform, made no secret of his pretended change of opinion; the council board, by virtue of the dispensing power, was filled with those who would refuse the test; a small junto of catholics, with father Petre, the king's confessor, at their head, took the management of almost all affairs upon themselves; men whose known want of principle gave reason to expect their compliance were raised to bishoprics; there could be no rational doubt of a concerted scheme to depress and discountenance the established church. The dismissal of Rochester, who had gone great lengths to preserve his power and emoluments, and would in all probability have concurred in the establishment of arbitrary power under a protestant sovereign, may be reckoned the most unequivocal evidence of the

king's intentions; and from thence we may date the decisive measures that were taken to counteract them.

§ 11. It was, I do not merely say the interest, but the clear right and bounden duty, of the prince of Orange to watch over the internal politics of England, on account of the near connection which his own birth and his marriage with the presumptive heir had created. He had, in fact, a stronger motive for watching the councils of his father-in-law than has generally been known. The king was, at his accession, in his fifty-fifth year, and had no male children; nor did the queen's health give much encouragement to expect them. A scheme was formed early in the king's reign to exclude the princess of Orange from the succession in favor of her sister Anne, in the event of the latter's conversion to the Romish faith. The French ministers at our court, Barillon and Bonrepos, gave ear to this hardy intrigue. They flattered themselves that both Anne and her husband were favorably disposed. But in this they were wholly mistaken. No one could be more unconquerably fixed in her religion than that princess. The king himself, when the Dutch ambassador, Van Citers, laid before him a document, probably drawn up by some catholics of his court, in which these audacious speculations were developed, declared his indignation at so criminal a project. It was not even in his power, he let the prince afterward know by a message, or in that of parliament, according to the principles which had been maintained in his own behalf, to change the fundamental order of succession to the crown. Nothing, indeed, can more forcibly paint the desperation of the popish faction than their entertainment of so preposterous a scheme. But it naturally increased the solicitude of William about the intrigues of the English cabinet. It does not appear that any direct overtures were made to the prince of Orange, except by a very few malcontents, till the embassy of Dykvelt from the States in the spring of 1687. It was William's object to ascertain, through that minister, the real state of parties in England. Such assurances as he carried back to Holland gave encouragement to an enterprise that would have been equally injudicious and unwarrantable without them. Danby, Halifax, Nottingham, and others of the tory as well as whig factions, entered into a secret correspondence with the prince of Orange; some from a real attachment to the constitutional limitations of monarchy; some from a conviction that, without open apostasy from the protestant faith, they could never obtain from James the prizes of their ambition. This must have been

the predominant motive with Lord Churchill, who never gave any proof of solicitude about civil liberty; and his influence taught the princess Anne to distinguish her interests from those of her father. It was about this time, also, that even Sunderland entered upon a mysterious communication with the prince of Orange; but whether he afterward served his present master only to betray him, as has been generally believed, or sought rather to propitiate, by clandestine professions, one who might in the course of events become such, is not, perhaps, what the evidence already known to the world will enable us to determine.

§ 12. The dismissal of Rochester was followed up, at no great distance of time, by the famous declaration for liberty of conscience, suspending the execution of all penal laws concerning religion, and freely pardoning all offenses against them, in as full a manner as if each individual had been named. He declared, also, his will and pleasure that the oaths of supremacy and allegiance, and the several tests enjoined by statutes of the late reign, should no longer be required of any one before his admission to offices of trust. The motive of this declaration was not so much to relieve the Roman catholics from penal and incapacitating statutes (which, since the king's accession and the judgment of the court of king's bench in favor of Hales, were virtually at an end), as, by extending to the protestant dissenters the same full measure of toleration, to enlist under the standard of arbitrary power those who had been its most intrepid and steadiest adversaries. It was after the prorogation of parliament that he had begun to caress that party, who in the first months of his reign had endured a continuance of their persecution. But the clergy in general detested the non-conformists hardly less than the papists, and had always abhorred the idea of even a parliamentary toleration. The present declaration went much further than the recognized prerogative of dispensing with prohibitory statutes. Instead of removing the disability from individuals by letters patent, it swept away at once, in effect, the solemn ordinances of the legislature. There was, indeed, a reference to the future concurrence of the two houses, whenever he should think it convenient for them to meet, but so expressed as rather to insult, than pay respect to, their authority. And no one could help considering the declaration of a similar nature just published in Scotland as the best commentary on the present. In that he suspended all laws against the Roman catholics and moderate presbyterians, "by his sovereign authority,

prerogative royal, and absolute power, which all his subjects were to obey without reserve;" and its whole tenor spoke, in as unequivocal language as his grandfather was accustomed to use, his contempt of all pretended limitations on his will.[1] Though the constitution of Scotland was not so well balanced as our own, it was notorious that the crown did not legally possess an absolute power in that kingdom; and men might conclude that, when he should think it less necessary to observe some measures with his English subjects, he would address them in the same strain.

§ 13. Those, indeed, who knew by what course his favor was to be sought, did not hesitate to go before and light him, as it were, to the altar on which their country's liberty was to be the victim. Many of the addresses which fill the columns of the *London Gazette* in 1687, on occasion of the declaration of indulgence, flatter the king with assertions of his dispensing power. These addresses, which, to the number of some hundreds, were sent up from every description of persons, the clergy, the non-conformists of all denominations, the grand juries, the justices of the peace, the corporations, the inhabitants of towns, in consequence of the declaration, afford a singular contrast to what we know of the prevailing dispositions of the people in that year, and of their general abandonment of the king's cause before the end of the next. But we should have cause to blush for the servile hypocrisy of our ancestors, if there were not good reason to believe that these addresses were sometimes the work of a small minority in the name of the rest. It was, however, very natural that they should deceive the court. The catholics were eager for that security which nothing but an act of the legislature could afford; and James, who, as well as his minister, had a strong aversion to the measure, seems, about the latter end of the summer of 1687, to have made a sudden change in his scheme of government, and resolved once more to try the disposition of a parliament. For this purpose, having dissolved that from which he could expect nothing hostile to the church, he set himself to manage the election of another in such a manner as to insure his main object, the security of the Romish religion.[2]

§ 14. "His first care," says his biographer Innes, "was to purge the corporations from that leaven which was in danger of corrupting the whole kingdom; so he appointed cer-

[1] Ralph, 943. Mazure, ii., 207.

[2] The proclamation for a new parliament came out Sept. 21, 1688. The king intended to create new peers enough to insure the repeal of the test.

tain regulators to inspect the conduct of several borough towns, to correct abuses where it was practicable, and where not, by forfeiting their charters, to turn out such rotten members as infected the rest." This endeavor to violate the legal rights of electors, as well as to take away other vested franchises, by new-modeling corporations through commissions granted to regulators, was the most capital delinquency of the king's government; because it tended to preclude any reparation for the rest, and directly attacked the fundamental constitution of the state. But, like all his other measures, it displayed not more ill-will to the liberties of the nation than inability to overthrow them. The catholics were so small a body, and so weak, especially in corporate towns, that the whole effect produced by the regulators was to place municipal power and trust in the hands of the nonconformists, those precarious and unfaithful allies of the court, whose resentment of past oppression, hereditary attachment to popular principles of government, and inveterate abhorrence of popery, were not to be effaced by an unnatural coalition. Hence, though they availed themselves, and surely without reproach, of the toleration held out to them, and even took the benefit of the scheme of regulation, so as to fill the corporation of London and many others, they were too much of Englishmen and protestants for the purposes of the court. The wiser part of the churchmen made secret overtures to their party; and by assurances of a toleration, if not also of a comprehension within the Anglican pale, won them over to a hearty concurrence in the great project that was on foot. The king found it necessary to descend so much from the haughty attitude he had taken at the outset of his reign, as personally to solicit men of rank and local influence for their votes on the two great measures of repealing the test and penal laws. The country gentlemen, in their different counties, were tried with circular questions, whether they would comply with the king in their elections, or, if themselves chosen, in parliament. Those who refused such a promise were erased from the lists of justices and deputy lieutenants. Yet his biographer admits that he received little encouragement to proceed in the experiment of a parliament; and it is said by the French ambassador that evasive answers were returned to these questions, with such uniformity of expression as indicated an alarming degree of concert.

§ 15. It is unnecessary to dwell on circumstances so well known as the expulsion of the fellows of Magdalen College.

It was less extensively mischievous than the new-modeling of corporations, but perhaps a more glaring act of despotism. For though the crown had been accustomed from the time of the Reformation to send very peremptory commands to ecclesiastical foundations, and even to dispense with their statutes at discretion, with so little resistance that few seemed to doubt of its prerogative; though Elizabeth would probably have treated the fellows of any college much in the same manner as James II., if they had proceeded to an election in defiance of her recommendation, yet the right was not the less clearly theirs, and the struggles of a century would have been thrown away if James II. was to govern as the Tudors, or even as his father and grandfather had done before him.[3] And though Parker, bishop of Oxford, the first president whom the ecclesiastical commissioners obtruded on the college, was still nominally a protestant, his successor Giffard was an avowed member of the church of Rome. The college was filled with persons of the same persuasion; mass was said in the chapel, and the established religion was excluded with a degree of open force which entirely took away all security for its preservation in any other place. This latter act, especially, of the Magdalen drama, in a still greater degree than the nomination of Massey to the deanery of Christ Church, seems a decisive proof that the king's repeated promises of contenting himself with a toleration of his own religion would have yielded to his insuperable bigotry and the zeal of his confessor.

§ 16. The infatuated monarch was irritated by that which he should have taken as a terrible warning, this resistance to his will from the university of Oxford. That sanctuary of pure, unspotted loyalty, as some would say—that sink of all that was most abject in servility, as less courtly tongues might murmur—the university of Oxford, which had but four short years back, by a solemn decree in convocation, poured forth anathemas on all who had doubted the divine right of monarchy, or asserted the privileges of subjects against their sovereigns, which had boasted in its addresses of an obedience without any restrictions or limitations, which but recently had seen a known convert to popery, and a person disqualified in other ways, installed by the chapter without any remonstrance in the deanery of Christ Church, was now the scene of a firm though temperate opposition to the

[3] This is the only ground to be taken in the great case of Magdalen College, as in that of Francis, at Cambridge, a little earlier; for the precedents of dispensing with college statutes by the royal authority were numerous.

king's positive command, and soon after the willing instrument of his ruin. In vain the pamphleteers, on the side of the court, upbraided the clergy with their apostasy from the principles they had so much vaunted. The imputation it was hard to repel; but, if they could not retract their course without shame, they could not continue in it without destruction. They were driven to extremity by the order of May 4, 1688, to read the declaration of indulgence in their churches. This, as is well known, met with great resistance, and, by inducing the primate and six other bishops to present a petition to the king against it, brought on that famous prosecution which, more perhaps than all his former actions, cost him the allegiance of the Anglican church. The proceedings upon the trial of those prelates are so familiar as to require no particular notice. What is most worthy of remark is, that the very party who had most extolled the royal prerogative, and often in such terms as if all limitations of it were only to subsist at pleasure, became now the instruments of bringing it down within the compass and control of the law. If the king had a right to suspend the execution of statutes by proclamation, the bishops' petition might not indeed be libelous, but their disobedience and that of the clergy could not be warranted; and the principal argument both of the bar and the bench rested on the great question of that prerogative.

The king, meantime, was blindly hurrying on at the instigation of his own pride and bigotry, and of some ignorant priests; confident in the fancied obedience of the church, and in the hollow support of the dissenters, after all his wiser counselors, the catholic peers, the nuncio, perhaps the queen herself, had grown sensible of the danger, and solicitous for temporizing measures. He had good reason to perceive that neither the fleet nor the army could be relied upon; to cashier the most rigidly protestant officers, to draft Irish troops into the regiments, to place all important commands in the hands of catholics, were difficult and even desperate measures, which rendered his designs more notorious, without rendering them more feasible. It is among the most astonishing parts of this unhappy sovereign's impolicy, that he sometimes neglected, even offended, never steadily and sufficiently courted, the sole ally that could by possibility have co-operated in his scheme of government. In his brother's reign James had been the most obsequious and unhesitating servant of the French king. Before his own accession, his first step was to implore, through Barillon, a continuance of that

support and protection, without which he could undertake nothing which he had designed in favor of the catholics. He received a present of 500,000 livres with tears of gratitude; and telling the ambassador he had not disclosed his real designs to his ministers, pressed for a strict alliance with Louis, as the means of accomplishing them. Yet, with a strange inconsistency, he drew off gradually from these professions, and not only kept on rather cool terms with France during part of his reign, but sometimes played a double game by treating of a league with Spain.

§ 17. The secret of this uncertain policy, which has not been well known till very lately, is to be found in the king's character. James had a real sense of the dignity pertaining to a king of England, and much of the national pride as well as that of his rank. He felt the degradation of importuning an equal sovereign for money, which Louis gave less frequently and in smaller measure than it was demanded. It is natural for a proud man not to love those before whom he has abased himself. James, of frugal habits, and master of a great revenue, soon became more indifferent to a French pension. Nor was he insensible to the reproach of Europe, that he was grown the vassal of France and had tarnished the lustre of the English crown. Had he been himself protestant, or his subjects catholic, he would probably have given the reins to that jealousy of his ambitious neighbor, which, even in his peculiar circumstances, restrained him from the most expedient course; I mean expedient, on the hypothesis that to overthrow the civil and religious institutions of his people was to be the main object of his reign. It is probable that a more ingenuous policy in the court of Whitehall, by determining the king of France to declare war sooner on Holland, would have prevented the expedition of the prince of Orange.

§ 18. The latter continued to receive strong assurances of attachment from men of rank in England, but wanted that direct invitation to enter the kingdom with force which he required both for his security and his justification. No men who thought much about their country's interests or their own would be hasty in venturing on so awful an enterprise. The punishment and ignominy of treason, the reproach of history, too often the sworn slave of fortune, awaited its failure. Thus Halifax and Nottingham found their conscience or their courage unequal to the crisis, and drew back from the hardy conspiracy that produced the Revolution. Nor, perhaps, would the seven eminent persons, whose names are

subscribed to the invitation addressed on the 30th of June, 1688, to the prince of Orange—the earls of Danby, Shrewsbury, and Devonshire, lord Lumley, the bishop of London, Mr. Henry Sidney, and admiral Russell—have committed themselves so far, if the recent birth of a prince of Wales had not made some measures of force absolutely necessary for the common interests of the nation and the prince of Orange. It can not be said without absurdity that James was guilty of any offense in becoming father of this child; yet it was evidently that which rendered his other offenses inexpiable. He was now considerably advanced in life; and the decided resistance of his subjects made it improbable that he could do much essential injury to the established constitution during the remainder of it. The mere certainty of all reverting to a protestant heir would be an effectual guaranty of the Anglican church. But the birth of a son to be nursed in the obnoxious bigotry of Rome, the prospect of a regency under the queen, so deeply implicated, according to common report, in the schemes of this reign, made every danger appear more terrible. From the moment that the queen's pregnancy was announced, the catholics gave way to enthusiastic, unrepressed exultation; and, by the confidence with which they prophesied the birth of an heir, furnished a pretext for the suspicions which a disappointed people began to entertain. These suspicions were very general: they extended to the highest ranks, and are a conspicuous instance of that prejudice which is chiefly founded on our wishes. Lord Danby, in a letter to William, of March 27, insinuates his doubt of the queen's pregnancy. After the child's birth, the seven subscribers to the association inviting the prince to come over, and pledging themselves to join him, say that not one in a thousand believe it to be the queen's; lord Devonshire separately held language to the same effect. The princess Anne talked with little restraint of her suspicions, and made no scruple of imparting them to her sister. Though no one can hesitate at present to acknowledge that the prince of Wales's legitimacy is out of all question, there was enough to raise a reasonable apprehension in the presumptive heir, that a party not really very scrupulous, and through religious animosity supposed to be still less so, had been induced by the undoubted prospect of advantage to draw the king, who had been wholly their slave, into one of those frauds which bigotry might call pious.

§ 19. The great event, however, of what has been emphatically denominated, in the language of our public acts, the

Glorious Revolution, stands in need of no vulgar credulity, no mistaken prejudice, for its support. It can only rest on the basis of a liberal theory of government, which looks to the public good as the great end for which positive laws and the constitutional order of states have been instituted. It can not be defended without rejecting the slavish principles of absolute obedience, or even that pretended modification of them which imagines some extreme case of intolerable tyranny, some, as it were, lunacy of despotism, as the only plea and palliation of resistance. Doubtless the administration of James II. was not of this nature. Doubtless he was not a Caligula, or a Commodus, or an Ezzelin, or a Galeazzo Sforza, or a Christiern II. of Denmark, or a Charles IX. of France, or one of those almost innumerable tyrants whom men have endured in the wantonness of unlimited power. No man had been deprived of his liberty by any illegal warrant. No man, except in the single though very important instance of Magdalen College, had been despoiled of his property. I must also add that the government of James II. will lose little by comparison with that of his father. The judgment in favor of his prerogative to dispense with the test was far more according to received notions of law, far less injurious and unconstitutional, than that which gave a sanction to ship-money. The injunction to read the declaration of indulgence in churches was less offensive to scrupulous men than the similar command to read the declaration of Sunday sports in the time of Charles I. Nor was any one punished for a refusal to comply with the one; while the prisons had been filled with those who had disobeyed the other. Nay, what is more, there are much stronger presumptions of the father's than of the son's intention to lay aside parliaments, and set up an avowed despotism. It is, indeed, amusing to observe that many who scarcely put bounds to their eulogies of Charles I. have been content to abandon the cause of one who had no faults in his public conduct but such as seemed to have come by inheritance. The characters of the father and son were very closely similar; both proud of their judgment as well as their station, and still more obstinate in their understanding than in their purpose; both scrupulously conscientious in certain great points of conduct, to the sacrifice of that power which they had preferred to every thing else: the one far superior in relish for the arts and for polite letters, the other more diligent and indefatigable in business; the father exempt from those vices of a court to which the son was too long addict-

ed; not so harsh, perhaps, or prone to severity in his temper, but inferior in general sincerity and adherence to his word. They were both equally unfitted for the condition in which they were meant to stand—the limited kings of a wise and free people, the chiefs of the English commonwealth.

The most plausible argument against the necessity of so violent a remedy for public grievances as the abjuration of allegiance to a reigning sovereign was one that misled half the nation in that age, and is still sometimes insinuated by those whose pity for the misfortunes of the house of Stuart appears to predominate over every other sentiment which the history of the revolution should excite. It was alleged that the constitutional mode of redress by parliament was not taken away; that the king's attempts to obtain promises of support from the electors and probable representatives showed his intention of calling one; that the writs were in fact ordered before the prince of Orange's expedition; that after the invader had reached London, James still offered to refer the terms of reconciliation with his people to a free parliament, though he could have no hope of evading any that might be proposed; that by reversing illegal judgments, by annulling unconstitutional dispensations, by reinstating those who had been unjustly dispossessed, by punishing wicked advisers—above all, by passing statutes to restrain the excesses and cut off the dangerous prerogatives of the monarchy (as efficacious, or more so, than the bill of rights and other measures that followed the revolution), all risk of abitrary power, or of injury to the established religion, might have been prevented, without a violation of that hereditary right which was as fundamental in the constitution as any of the subject's privileges. It was not necessary to enter upon the delicate problem of absolute non-resistance, or to deny that the conservation of the whole was paramount to all positive laws. The question to be proved was, that a regard to this general safety exacted the means employed in the revolution, and constituted that extremity which could alone justify such a deviation from the standard rules of law and religion.

It is evidently true that James had made very little progress, or, rather, experienced a signal defeat, in his endeavor to place the professors of his own religion on a firm and honorable basis. There seems the strongest reason to believe that, far from reaching his end through the new parliament, he would have experienced those warm assaults on the administration which generally distinguished the house of com-

mons under his father and brother. But as he was in no want of money, and had not the temper to endure what he thought the language of republican faction, we may be equally sure that a short and angry session would have ended with a more decided resolution on his side to govern in future without such impracticable counselors. The doctrine imputed of old to lord Strafford—that, after trying the goodwill of parliament in vain, a king was absolved from the legal maxims of government—was always at the heart of the Stuarts. His army was numerous, according at least to English notions; he had already begun to fill it with popish officers and soldiers; the militia, though less to be depended on, was under the command of lord and deputy lieutenants carefully selected; above all, he would at the last have recourse to France; and though the experiment of bringing over French troops was very hazardous, it is difficult to say that he might not have succeeded, with all these means, in preventing or putting down any concerted insurrection. But at least the renewal of civil bloodshed and the anarchy of rebellion seemed to be the alternative of slavery, if William had never earned the just title of our deliverer. It is still more evident that, after the invasion had taken place, and a general defection had exhibited the king's inability to resist, there could have been no such compromise as the tories fondly expected, no legal and peaceable settlement in what they called a free parliament, leaving James in the real and recognized possession of his constitutional prerogatives. Those who have grudged William III. the laurels that he won for our service are ever prone to insinuate that his unnatural ambition would be content with nothing less than the crown, instead of returning to his country after he had convinced the king of the error of his counsels, and obtained securities for the religion and liberties of England. The hazard of the enterprise, and most hazardous it truly was, was to have been his; the profit and advantage our own. I do not know that William absolutely expected to place himself on the throne, because he could hardly anticipate that James would so precipitately abandon a kingdom wherein he was acknowledged, and had still many adherents. But undoubtedly he must, in consistency with his magnanimous designs, have determined to place England in its natural station, as a party in the great alliance against the power of Louis XIV. To this one object of securing the liberties of Europe, and chiefly of his own country, the whole of his heroic life was directed with undeviating, undisheartened firmness. He had in view no dis-

tant prospect, when the entire succession of the Spanish monarchy would be claimed by that insatiable prince, whose renunciation at the treaty of the Pyrenees was already maintained to be invalid. Against the present aggressions and future schemes of this neighbor the league of Augsburg had just been concluded. England, a free, a protestant, a maritime kingdom, would, in her natural position, as a rival of France, and deeply concerned in the independence of the Netherlands, become a leading member of this confederacy. But the sinister attachments of the house of Stuart had long diverted her from her true interests, and rendered her councils disgracefully and treacherously subservient to those of Louis. It was therefore the main object of the prince of Orange to strengthen the alliance by the vigorous co-operation of this kingdom; and with no other view, the emperor, and even the pope, had abetted his undertaking. But it was impossible to imagine that James would have come with sincerity into measures so repugnant to his predilections and interests. What better could be expected than a recurrence of that false and hollow system which had betrayed Europe and dishonored England under Charles II.; or, rather, would not the sense of injury and thralldom have inspired still more deadly aversion to the cause of those to whom he must have ascribed his humiliation? There was as little reason to hope that he would abandon the long-cherished schemes of arbitrary power, and the sacred interests of his own faith.

§ 20. In the Revolution of 1688 there was an unusual combination of favoring circumstances, and some of the most important, such as the king's sudden flight, not within prior calculation, which renders it no precedent for other times and occasions in point of expediency, whatever it may be in point of justice. Resistance to tyranny by overt rebellion incurs not only the risks of failure, but those of national impoverishment and confusion, of vindictive retaliation, and such aggressions (perhaps inevitable) on private right and liberty as render the name of revolution and its adherents odious. Those, on the other hand, who call in a powerful neighbor to protect them from domestic oppression, may too often expect to realize the horse of the fable, and endure a subjection more severe, permanent, and ignominious, than what they shake off. But the revolution effected by William III. united the independent character of a national act with the regularity and the coercion of anarchy which belong to a military invasion. The United Provinces were not such a foreign potentate as could put in jeopardy the

independence of England; nor could his army have maintained itself against the inclinations of the kingdom, though it was sufficient to repress any turbulence that would naturally attend so extraordinary a crisis. Nothing was done by the multitude; no new men, either soldiers or demagogues, had their talents brought forward by this rapid and pacific revolution; it cost no blood, it violated no right, it was hardly to be traced in the course of justice; the formal and exterior character of the monarchy remained nearly the same in so complete a regeneration of its spirit. Few nations can hope to ascend up to the sphere of a just and honorable liberty, especially when long use has made the track of obedience familiar, and they have learned to move as it were only by the clank of the chain, with so little toil and hardship. We reason too exclusively from this peculiar instance of 1688, when we hail the fearful struggles of other revolutions with a sanguine and confident sympathy. Nor is the only error upon this side. For, as if the inveterate and cankerous ills of a commonwealth could be extirpated with no loss and suffering, we are often prone to abandon the popular cause in agitated nations with as much fickleness as we embraced it, when we find that intemperance, irregularity, and confusion, from which great revolutions are very seldom exempt. These are indeed so much their usual attendants, the reaction of a self-deceived multitude is so probable a consequence, the general prospect of success in most cases so precarious, that wise and good men are more likely to hesitate too long, than to rush forward too eagerly. Yet, "whatever be the cost of this noble liberty, we must be content to pay it to Heaven."[4]

It is unnecessary even to mention those circumstances of this great event which are minutely known to almost all my readers. They were all eminently favorable in their effect to the regeneration of our constitution; even one of temporary inconvenience, namely, the return of James to London, after his detention by the fishermen near Feversham. This, as Burnet has observed, and as is easily demonstrated by the writings of that time, gave a different color to the state of affairs, and raised up a party which did not before exist, or at least was too disheartened to show itself. His first desertion of the kingdom had disgusted every one, and might be construed into a voluntary cession. But his return to assume again the government put William under the necessity of using that intimidation which awakened the mistaken

[4] Montesquieu.

sympathy of a generous people. It made his subsequent flight, though certainly not what a man of courage enough to give his better judgment free play would have chosen, appear excusable and defensive. It brought out too glaringly, I mean for the satisfaction of prejudiced minds, the undeniable fact, that the two houses of convention deposed and expelled their sovereign. Thus the great schism of the Jacobites, though it must otherwise have existed, gained its chief strength; and the revolution, to which at the outset a coalition of whigs and tories had conspired, became, in its final result, in the settlement of the crown upon William and Mary, almost entirely the work of the former party.

But while the position of the new government was thus rendered less secure, by narrowing the basis of public opinion whereon it stood, the liberal principles of policy which the whigs had espoused became incomparably more powerful, and were necessarily involved in the continuance of the revolution settlement. The ministers of William III. and of the house of Brunswick had no choice but to respect and countenance the doctrines of Locke, Hoadley, and Molesworth. The assertion of passive obedience to the crown grew obnoxious to the crown itself. Our new line of sovereigns scarcely ventured to hear of their hereditary right, and dreaded the cup of flattery that was drugged with poison. This was the greatest change that affected our monarchy by the fall of the house of Stuart. The laws were not so materially altered as the spirit and sentiments of the people. Hence those who look only at the former have been prone to underrate the magnitude of this revolution. The fundamental maxims of the constitution, both as they regard the king and the subject, may seem nearly the same; but the disposition with which they were received and interpreted was entirely different.

§ 21. It was in this turn of feeling, in this change, if I may so say, of the heart, far more than in any positive statutes and improvements of the law, that I consider the Revolution to have been eminently conducive to our freedom and prosperity. Laws and statutes as remedial—nay, more closely limiting the prerogative than the bill of rights and act of settlement—might possibly have been obtained from James himself, as the price of his continuance on the throne, or from his family as that of their restoration to it. But what the Revolution did for us was this: it broke a spell that had charmed the nation. It cut up by the roots all that theory of indefeasible right, of paramount prerogative, which had

put the crown in continual opposition to the people. A contention had now subsisted for five hundred years, but particularly during the last four reigns, against the aggressions of arbitrary power. The sovereigns of this country had never patiently endured the control of parliament; nor was it natural for them to do so, while the two houses of parliament appeared historically, and in legal language, to derive their existence as well as privileges from the crown itself. They had at their side the pliant lawyers, who held the prerogative to be uncontrollable by statutes, a doctrine of itself destructive to any scheme of reconciliation and compromise between the king and his subjects; they had the churchmen, whose casuistry denied that the most intolerable tyranny could excuse resistance to a lawful government. These two propositions could not obtain general acceptation without rendering all national liberty precarious.

It has been always reckoned among the most difficult problems in the practical science of government to combine an hereditary monarchy with security of freedom, so that neither the ambition of kings shall undermine the people's rights, nor the jealousy of the people overturn the throne. England had already experience of both these mischiefs. And there seemed no prospect before her, but either their alternate recurrence, or a final submission to absolute power, unless by one great effort she could put the monarchy forever beneath the law, and reduce it to an integrant portion instead of the primary source and principle of the constitution. She must reverse the favored maxim, "A Deo rex, à rege lex," and make the crown itself appear the creature of the law. But our ancient monarchy, strong in a possession of seven centuries, and in those high and paramount prerogatives which the consenting testimony of lawyers and the submission of parliaments had recognized, a monarchy from which the house of commons and every existing peer, though not, perhaps, the aristocratic order itself, derived its participation in the legislature, could not be bent to the republican theories which have been not very successfully attempted in some modern codes of constitution. It could not be held, without breaking up all the foundations of our polity, that the monarchy emanated from the parliament, or, in any historical sense, from the people. But by the Revolution, and by the act of settlement, the rights of the actual monarch, of the reigning family, were made to emanate from the parliament and the people. In technical language, in the grave and respectful theory of our constitution, the crown is still

the fountain from which law and justice spring forth. Its prerogatives are in the main the same as under the Tudors and the Stuarts; but the right of the house of Brunswick to exercise them can only be deduced from the convention of 1688.

The great advantage, therefore, of the Revolution, as I would explicitly affirm, consists in that which was reckoned its reproach by many, and its misfortune by more—that it broke the line of succession. No other remedy could have been found, according to the temper and prejudices of those times, against the unceasing conspiracy of power. But when the very tenure of power was conditional, when the crown, as we may say, gave recognizances for its good behavior, when any violent and concerted aggressions on public liberty would have ruined those who could only resist an inveterate faction by the arms which liberty put in their hands, the several parts of the constitution were kept in cohesion by a tie far stronger than statutes, that of a common interest in its preservation. Those liberal tenets, which at the era of the Revolution were maintained but by one denomination of English party, and rather, perhaps, on authority of not very good precedents in our history than of sound general reasoning, became, in the course of the next generation, almost equally the creed of the other, whose long exclusion from government taught them to solicit the people's favor; and by the time that Jacobitism was extinguished, had passed into received maxims of English politics. None, at least, would care to call them in question within the walls of parliament; nor have their opponents been of much credit in the paths of literature. Yet, as since the extinction of the house of Stuart's pretensions, and other events of the last half century, we have seen those exploded doctrines of indefeasible hereditary right revived under another name, and some have been willing to misrepresent the transactions of the Revolution and the act of settlement as if they did not absolutely amount to a deposition of the reigning sovereign, and an election of a new dynasty by the representatives of the nation in parliament, it may be proper to state precisely the several votes, and to point out the impossibility of reconciling them to any gentler construction.

§ 22. The lords spiritual and temporal, to the number of about ninety, and an assembly of all who had sat in any of king Charles's parliaments, with the lord mayor and fifty of the common council, requested the prince of Orange to take upon him the administration after the king's second flight,

and to issue writs for a convention in the usual manner. This was on the 26th of December; and the convention met on the 22d of January. Their first care was to address the prince to take the administration of affairs and disposal of the revenue into his hands, in order to give a kind of parliamentary sanction to the power he already exercised. On the 28th of January the commons, after a debate in which the friends of the late king made but a faint opposition, came to their great vote: That king James II., having endeavored to subvert the constitution of this kingdom by breaking the original contract between king and people, and by the advice of Jesuits and other wicked persons having violated the fundamental laws, and having withdrawn himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant. They resolved unanimously the next day, that it hath been found by experience inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince. This vote was a remarkable triumph of the whig party, who had contended for the exclusion bill; and, on account of that endeavor to establish a principle which no one was now found to controvert, had been subjected to all the insults and reproaches of the opposite faction. The lords agreed with equal unanimity to this vote; which, though it was expressed only as an abstract proposition, led by a practical inference to the whole change that the whigs had in view. But upon the former resolution several important divisions took place. The first question put, in order to save a nominal allegiance to the late king, was, whether a regency, with the administration of regal power under the style of king James II. during the life of the said king James, be the best and safest way to preserve the protestant religion and the laws of this kingdom? This was supported both by those peers who really meant to exclude the king from the enjoyment of power, such as Nottingham, its great promoter, and by those who, like Clarendon, were anxious for his return upon terms of security for their religion and liberty. The motion was lost by fifty-one to forty-nine; and this seems to have virtually decided, in the judgment of the house, that James had lost the throne. The lords then resolved that there was an original contract between the king and the people, by fifty-five to forty-six; a position that seems rather too theoretical, yet necessary at that time, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived. They concurred, without much debate, in the rest of the commons' vote, till they came to the clause

that he had abdicated the government, for which they substituted the word "deserted." They next omitted the final and most important clause, that the throne was thereby vacant, by a majority of fifty-five to forty-one. This was owing to the party of lord Danby, who asserted a devolution of the crown on the princess of Orange. It seemed to be tacitly understood by both sides that the infant child was to be presumed spurious. This, at least, was a necessary supposition for the tories, who sought in the idle rumors of the time an excuse for abandoning his right. As to the whigs, though they were active in discrediting this unfortunate boy's legitimacy, their own broad principles of changing the line of succession rendered it, in point of argument, a superfluous inquiry. The tories, who had made little resistance to the vote of abdication when it was proposed in the commons, recovered courage by this difference between the two houses; and perhaps, by observing the king's party to be stronger out-of-doors than it had appeared to be, were able to muster 151 voices against 282 in favor of agreeing with the lords in leaving out the clause about the vacancy of the throne. There was still, however, a far greater preponderance of the whigs in one part of the convention than of the tories in the other. In the famous conference that ensued between committees of the two houses upon these amendments, it was never pretended that the word "abdication" was used in its ordinary sense for a voluntary resignation of the crown. The commons did not practice so pitiful a subterfuge. Nor could the lords explicitly maintain, whatever might be the wishes of their managers, that the king was not expelled and excluded as much by their own word "desertion" as by that which the lower house had employed. Their own previous vote against a regency was decisive upon this point. But as abdication was a gentler term than forfeiture, so desertion appeared a still softer method of expressing the same idea. Their chief objection, however, to the former word was that it led, or might seem to lead, to the vacancy of the throne, against which their principal arguments were directed. They contended that in our government there could be no interval or vacancy, the heir's right being complete by a demise of the crown: so that it would at once render the monarchy elective if any other person were designated to the succession. The commons did not deny that the present case was one of election, though they refused to allow that the monarchy was thus rendered perpetually elective. They asked, supposing a right to descend upon the next heir, who was that heir to inherit

it? and gained one of their chief advantages by the difficulty of evading this question. It was, indeed, evident that if the lords should carry their amendments, an inquiry into the legitimacy of the prince of Wales could by no means be dispensed with. Unless that could be disproved more satisfactorily than they had reason to hope, they must come back to the inconveniences of a regency, with the prospect of bequeathing interminable confusion to their posterity. For, if the descendants of James should continue in the Roman catholic religion, the nation might be placed in the ridiculous situation of acknowledging a dynasty of exiled kings, whose lawful prerogative would be withheld by another race of protestant regents. It was, indeed, strange to apply the provisional substitution of a regent in cases of infancy or imbecility of mind to a prince of mature age and full capacity for the exercise of power. Upon the king's return to England this delegated authority must cease of itself, unless supported by votes of parliament as violent and incompatible with the regular constitution as his deprivation of the royal title, but far less secure for the subject, whom the statute of Henry VII. would shelter in paying obedience to a king de facto, while the fate of sir Henry Vane was an awful proof that no other name could give countenance to usurpation. A great part of the nation not thirty years before had been compelled by acts of parliament to declare upon oath their abhorrence of that traitorous position, that arms might be taken up by the king's authority against his person or those commissioned by him, through the influence of those very tories or loyalists who had now recourse to the identical distinction between the king's natural and political capacity, for which the presbyterians had incurred so many reproaches.

In this conference, however, if the whigs had every advantage on the solid grounds of expediency, or rather political necessity, the tories were as much superior in the mere argument, either as it regarded the common sense of words, or the principles of our constitutional law. Even should we admit that an hereditary king is competent to abdicate the throne in the name of all his posterity, this could only be intended of a voluntary and formal cession, not such a constructive abandonment of his right by misconduct as the commons had imagined. The word "forfeiture" might better have answered this purpose; but it had seemed too great a violence on principles which it was more convenient to undermine than to assault. Nor would even forfeiture bear out by analogy the exclusion of an heir whose right was not liable to be set aside at the ancestor's pleasure. It was only

by recurring to a kind of paramount, and what I may call hyperconstitutional law, a mixture of force and regard to the national good, which is the best sanction of what is done in revolutions, that the vote of the commons could be defended. They proceeded not by the stated rules of the English government, but the general rights of mankind. They looked not so much to Magna Charta as the original compact of society, and rejected Coke and Hale for Hooker and Harrington.

§ 23. The house of lords, after this struggle against principles undoubtedly very novel in the discussions of parliament, gave way to the strength of circumstance and the steadiness of the commons. They resolved not to insist on their amendments to the original vote; and followed this up by a resolution, that the prince and princess of Orange shall be declared king and queen of England, and all the dominions thereunto belonging. But the commons, with a noble patriotism, delayed to concur in this hasty settlement of the crown till they should have completed the declaration of those fundamental rights and liberties for the sake of which alone they had gone forward with this great revolution. That declaration, being at once an exposition of the misgovernment which had compelled them to dethrone the late king, and of the conditions upon which they elected his successors, was incorporated in the final resolution to which both houses came on the 13th of February, extending the limitation of the crown as far as the state of affairs required: "That William and Mary, prince and princess of Orange, be, and be declared, king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their decease the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange."

Thus, to sum up the account of this extraordinary change in our established monarchy, the convention pronounced, under the slight disguise of a word unusual in the language of English law, that the actual sovereign had forfeited his right to the nation's allegiance. It swept away by the same vote the reversion of his posterity and of those who could claim

the inheritance of the crown. It declared that, during an interval of nearly two months, there was no king of England; the monarchy lying, as it were, in abeyance from the 23d of December to the 13th of February. It bestowed the crown on William, jointly with his wife indeed, but so that her participation of the sovereignty should be only in name. It postponed the succession of the princess Anne during his life. Lastly, it made no provision for any future devolution of the crown in failure of issue from those to whom it was thus limited, leaving that to the wisdom of future parliaments. Yet only eight years before, nay, much less, a large part of the nation had loudly proclaimed the incompetency of a full parliament, with a lawful king at its head, to alter the lineal course of succession. No whig had then openly professed the doctrine, that not only a king, but an entire royal family, might be set aside for public convenience. The notion of an original contract was denounced as a republican chimera. The deposing of kings was branded as the worst birth of popery and fanaticism. If other revolutions have been more extensive in their effect on the established government, few perhaps have displayed a more rapid transition of public opinion. For it can not, I think, be reasonably doubted that the majority of the nation went along with the vote of their representatives. Such was the termination of that contest which the house of Stuart had obstinately maintained against the liberties, and of late against the religion, of England; or rather, of that far more ancient controversy between the crown and the people, which had never been wholly at rest since the reign of John. During this long period, the balance, except in a few irregular intervals, had been swayed in favor of the crown; and though the government of England was always a monarchy limited by law, though it always, or at least since the admission of the commons into the legislature, partook of the three simple forms, yet the character of a monarchy was evidently prevalent over the other parts of the constitution. But since the Revolution of 1688, and particularly from thence to the death of George II., after which the popular element grew much stronger, it seems equally just to say that the predominating character has been aristocratical; the prerogative being in some respects too limited, and in others too little capable of effectual exercise, to counterbalance the hereditary peerage, and that class of great territorial proprietors who, in a political division, are to be reckoned among the proper aristocracy of the kingdom. This, however, will be more fully explained in the two succeeding chapters.

CHAPTER XV.

ON THE REIGN OF WILLIAM III.

§ 1. Declaration of Rights. § 2. Bill of Rights. § 3. Military Force without Consent declared Illegal. § 4. Discontent with the new Government. § 5. Its Causes. Incompatibility of the Revolution with received Principles. § 6. Character and Errors of William. § 7. Jealousy of the Whigs. Bill of Indemnity. § 8. Bill for restoring Corporations. § 9. Settlement of the Revenue. § 10. Appropriation of Supplies. § 11. Dissatisfaction of the King. § 12. No Republican Party in Existence. § 13. William employs Tories in Ministry. Intrigues with the late King. § 14. Schemes for his Restoration. § 15. Attainder of Sir John Fenwick. § 16. Ill Success of the War. § 17. Its Expenses. § 18. Treaty of Ryswick. § 19. Jealousy of the Commons. Army reduced. § 20. Irish Forfeitures resumed. § 21. Parliamentary Inquiries. § 22. Treaties of Partition. § 23. Improvements in Constitution under William. § 24. Bill for Triennial Parliaments. § 25. Law of Treason. § 26. Liberty of the Press. § 27. Law of Libel. § 28. Religious Toleration. § 29. Attempt at Comprehension. § 30. Schism of the Non-jurors. § 31. Laws against Roman Catholics. § 32. Act of Settlement. § 33. Limitations of Prerogative contained in it. § 34. Privy Council superseded by a Cabinet. § 35. Exclusion of Placemen and Pensioners from Parliament. § 36. Independence of Judges. § 37. Oath of Abjuration.

§ 1. The Revolution is not to be considered as a mere effort of the nation on a pressing emergency to rescue itself from the violence of a particular monarch, much less as grounded upon the danger of the Anglican church, its emoluments, and dignities, from the bigotry of a hostile religion. It was rather the triumph of those principles which, in the language of the present day, are denominated liberal or constitutional, over those of absolute monarchy, or of monarchy not effectually controlled by stated boundaries. It was the termination of a contest between the regal power and that of parliament, which could not have been brought to so favorable an issue by any other means. But, while the chief renovation in the spirit of our government was likely to spring from breaking the line of succession, while no positive enactments would have sufficed to give security to freedom with the legitimate race of Stuart on the throne, it would have been most culpable, and even preposterous, to permit this occasion to pass by without asserting and defining those rights and liberties which the very indeterminate nature of the king's prerogative at common law, as well as the unequivocal extension it had lately received, must continually place in jeopardy. The house of lords, indeed, as I have observed in the last chapter, would have conferred the crown on William and Mary, leaving the redress of grievances to

future arrangement; and some eminent lawyers in the commons, Maynard and Pollexfen, seem to have had apprehensions of keeping the nation too long in a state of anarchy. But the great majority of the commons wisely resolved to go at once to the root of the nation's grievances, and show their new sovereign that he was raised to the throne for the sake of those liberties by violating which his predecessor had forfeited it.

The declaration of rights presented to the prince of Orange by the marquis of Halifax, as speaker of the lords, in the presence of both houses, on the 18th of February, consists of three parts: a recital of the illegal and arbitrary acts committed by the late king, and of their consequent vote of abdication; a declaration, nearly following the words of the former part, that such enumerated acts are illegal; and a resolution that the throne shall be filled by the prince and princess of Orange, according to the limitations mentioned in the last chapter. Thus the declaration of rights was indissolubly connected with the revolution settlement, as its motive and its condition.

The lords and commons in this instrument declare: That the pretended power of suspending laws, and the execution of laws, by regal authority without consent of parliament, is illegal; That the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal; That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious; That levying of money for or to the use of the crown, by pretense of prerogative without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal; That it is the right of the subjects to petition the king, and that all commitments or prosecutions for such petitions are illegal; That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is illegal; That the subjects which are protestants may have arms for their defense suitable to their condition, and as allowed by law; That election of members of parliament ought to be free; That the freedom of speech or debates, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament; That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; That juries ought to be duly impaneled and returned, and that jurors which

pass upon men in trials of high treason ought to be freeholders; That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void; And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

§ 2. This declaration was, some months afterward, confirmed by a regular act of the legislature in the BILL OF RIGHTS, which establishes, at the same time, the limitation of the crown according to the vote of both houses, and adds the important provision, that all persons who shall hold communion with the church of Rome, or shall marry a papist, shall be excluded, and forever incapable to possess, inherit, or enjoy, the crown and government of this realm; and in all such cases the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. This was as near an approach to a generalization of the principle of resistance as could be admitted with any security for public order.

The bill of rights contained only one clause extending rather beyond the propositions laid down in the declaration. This relates to the dispensing power, which the lords had been unwilling absolutely to condemn. They softened the general assertion of its illegality sent up from the other house, by inserting the words "as it has been exercised of late." In the bill of rights, therefore, a clause was introduced, that no dispensation by non obstante to any statute should be allowed, except in such cases as should be specially provided for by a bill to be passed during the present session. This reservation went to satisfy the scruples of the lords, who did not agree without difficulty to the complete abolition of a prerogative, so long recognized, and in many cases so convenient. But the palpable danger of permitting it to exist in its indefinite state, subject to the interpretation of time-serving judges, prevailed with the commons over this consideration of convenience; and though in the next parliament the judges were ordered by the house of lords to draw a bill for the king's dispensing in such cases wherein they should find it necessary, and for abrogating such laws as had been usually dispensed with and were become useless, the subject seems to have received no further attention.[1]

§ 3. Except in this article of the dispensing prerogative, we can not say, on comparing the bill of rights with what is proved to be the law by statutes, or generally esteemed to be

[1] The "Bill of Rights" is given at the end of the present chapter.

such on the authority of our best writers, that it took away any legal power of the crown, or enlarged the limits of popular and parliamentary privilege. The most questionable proposition, though at the same time one of the most important, was that which asserts the illegality of a standing army in time of peace, unless with consent of parliament. It seems difficult to perceive in what respect this infringed on any private man's right, or by what clear reason (for no statute could be pretended) the king was debarred from enlisting soldiers by voluntary contract for the defense of his dominions, especially after an express law had declared the sole power over the militia, without giving any definition of that word, to reside in the crown. This had never been expressly maintained by Charles II.'s parliaments; though the general repugnance of the nation to what was certainly an innovation might have provoked a body of men who did not always measure their words to declare its illegality. It was, however, at least unconstitutional, by which, as distinguished from illegal, I mean a novelty of much importance, tending to endanger the established laws. And it is manifest that the king could never inflict penalties by martial law, or generally by any other course, on his troops, nor quarter them on the inhabitants, nor cause them to interfere with the civil authorities; so that, even if the proposition so absolutely expressed may be somewhat too wide, it still should be considered as virtually correct. But its distinct assertion in the bill of rights put a most essential restraint on the monarchy, and rendered it, in effect, forever impossible to employ any direct force or intimidation against the established laws and liberties of the people.

§ 4. A revolution so thoroughly remedial, and accomplished with so little cost of private suffering, so little of angry punishment or oppression of the vanquished, ought to have been hailed with unbounded thankfulness and satisfaction. The nation's deliverer and chosen sovereign, in himself the most magnanimous and heroic character of that age, might have expected no return but admiration and gratitude. Yet this was very far from being the case. In no period of time under the Stuarts were public discontent and opposition of parliament more prominent than in the reign of William III.; and that high-souled prince enjoyed far less of his subjects' affection than Charles II. No part of our history, perhaps, is read, upon the whole, with less satisfaction than these thirteen years during which he sat upon his elective throne. It will be sufficient for me to sketch generally the leading causes,

and the errors both of the prince and people, which hindered the blessings of the Revolution from being duly appreciated by its contemporaries.

§ 5. The votes of the two houses, that James had abdicated, or in plainer words forfeited, his royal authority; that the crown was vacant, that one out of the regular line of succession should be raised to it, were so untenable by any known law, so repugnant to the principles of the established church, that a nation accustomed to think upon matters of government only as lawyers and churchmen dictated could not easily reconcile them to its preconceived notions of duty. The first burst of resentment against the late king was mitigated by his fall; compassion, and even confidence, began to take place of it; his adherents—some denying or extenuating the faults of his administration, others more artfully representing them as capable of redress by legal measures—having recovered from their consternation, took advantage of the necessary delay before the meeting of the convention, and of the time consumed in its debates, to publish pamphlets and circulate rumors in his behalf. Thus, at the moment when William and Mary were proclaimed (though it seems highly probable that a majority of the kingdom sustained the bold votes of its representatives), there was yet a very powerful minority who believed the constitution to be most violently shaken, if not irretrievably destroyed, and the rightful sovereign to have been excluded by usurpation. The clergy were moved by pride and shame, by the just apprehension that their influence over the people would be impaired, by jealousy or hatred of the non-conformists, to deprecate so practical a confutation of the doctrines they had preached, especially when an oath of allegiance to their new sovereign came to be imposed; and they had no alternative but to resign their benefices, or wound their reputations and consciences by submission upon some casuistical pretext. Eight bishops, including the primate and several of those who had been foremost in the defense of the church during the late reign, with about four hundred clergy, some of them highly distinguished, chose the more honorable course of refusing the new oaths; and thus began the schism of the non-jurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William III. and George I. as the false submission of less sincere men.

§ 6. The demeanor of William, always cold and sometimes harsh, his foreign origin (a sort of crime in English eyes) and foreign favorites, the natural and almost laudable prejudice

against one who had risen by the misfortunes of a very near relation, conspired, with a desire of power not very judiciously displayed by him, to keep alive this disaffection; and the opposite party, regardless of all the decencies of political lying, took care to aggravate it by the vilest calumnies against one who, though not exempt from errors, must be accounted the greatest man of his own age. It is certain that his government was in very considerable danger for three or four years after the Revolution, and even to the peace of Ryswick. The change appeared so marvelous, and contrary to the bent of men's expectation, that it could not be permanent. Hence he was surrounded by the timid and the treacherous; by those who meant to have merits to plead after a restoration, and those who meant at least to be secure. A new and revolutionary government is seldom fairly dealt with. Mankind, accustomed to forgive almost every thing in favor of legitimate prescriptive power, exact an ideal faultlessness from that which claims allegiance on the score of its utility. Those who deem their own merit unrewarded become always a numerous and implacable class of adversaries; those whose schemes of public improvement have not been followed think nothing gained by the change, and return to a restless censoriousness in which they have been accustomed to place delight. With all these it was natural that William should have to contend; but we can not in justice impute all the unpopularity of his administration to the disaffection of one party, or the fickleness and ingratitude of another. It arose in no slight degree from errors of his own.

§ 7. The king had been raised to the throne by the vigor and zeal of the whigs; but the opposite party were so nearly upon an equality in both houses that it would have been difficult to frame his government on an exclusive basis. It would also have been highly impolitic, and with respect to some few persons, ungrateful, to put a slight upon those who had an undeniable majority in the most powerful classes. William acted, therefore, on a wise and liberal principle, in bestowing offices of trust on lord Danby, so meritorious in the Revolution, and on lord Nottingham, whose probity was unimpeached; while he gave the whigs, as was due, a decided preponderance in his council. Many of them, however, with that indiscriminating acrimony which belongs to all factions, could not endure the elevation of men who had complied with the court too long, and seemed, by their tardy opposition, to be rather the patriots of the church than of civil liberty. They remembered that Danby had been impeached

as a corrupt and dangerous minister; that Halifax had been involved, at least by holding a confidential office at the time, in the last and worst part of Charles's reign. They saw Godolphin, who had concurred in the commitment of the bishops, and every other measure of the late king, still in the treasury; and, though they could not reproach Nottingham with any misconduct, were shocked that his conspicuous opposition to the new settlement should be rewarded with the post of secretary of state. The mismanagement of affairs in Ireland during 1689, which was very glaring, furnished specious grounds for suspicion that the king was betrayed. It is probable that he was so, though not at that time by the chiefs of his ministry. This was the beginning of that dissatisfaction with the government of William, on the part of those who had the most zeal for his throne, which eventually became far more harassing than the conspiracies of his real enemies. Halifax gave way to the prejudices of the commons, and retired from power.

The same honest warmth which impelled the whigs to murmur at the employment of men sullied by their compliance with the court, made them unwilling to concur in the king's desire of a total amnesty. They retained the bill of indemnity in the commons; and excepting some by name, and many more by general clauses, gave their adversaries a pretext for alarming all those whose conduct had not been irreproachable. Nothing was concluded as to the indemnity in this parliament; but in the next, William took the matter into his own hands by sending down an act of grace.

§ 8. I scarcely venture, at this distance from the scene, to pronounce an opinion as to the clause introduced by the whigs into a bill for restoring corporations, which excluded for the space of seven years all who had acted, or even concurred, in surrendering charters from municipal offices of trust. This was no doubt intended to maintain their own superiority by keeping the church or tory faction out of corporations. It evidently was not calculated to assuage the prevailing animosities. But, on the other hand, it was not unfair for the whigs to provide some security against men who, in spite of their oaths of allegiance, were not likely to have thoroughly abjured their former principles. This clause, which modern historians generally condemn as oppressive, had the strong support of Mr. Somers, then solicitor-general. It was, however, lost through the court's conjunction with the tories in the lower house, and the bill itself fell to the ground in the upper; so that those who had come into

corporations by very ill means retained their power, to the great disadvantage of the Revolution party, as the next elections made appear.

But if the whigs behaved in these instances with too much of passion, they amply redeemed their glory by what cost them the new king's favor, their wise and admirable settlement of the revenue.

§ 9. The first parliament of Charles II. had fixed on £1,200,000 as the ordinary revenue of the crown, sufficient in times of no peculiar exigency for the support of its dignity and for the public defense. For this they provided various resources; the hereditary excise on liquors granted in lieu of the king's feudal rights, other excise and custom duties granted for his life, the post-office, the crown-lands, the tax called hearth-money, or two shillings for every house, and some of smaller consequence. These, in the beginning of that reign, fell short of the estimate; but before its termination, by the improvement of trade and stricter management of the customs, they certainly exceeded that sum. For the revenue of James from these sources, on an average of the four years of his reign, amounted to £1,500,964; to which something more than £400,000 is to be added for the produce of duties imposed for eight years by his parliament of 1685.

William appears to have entertained no doubt that this great revenue, as well as all the power and prerogative of the crown, became vested in himself as king of England, or at least ought to be instantly settled by parliament according to the usual method. There could, indeed, be no pretense for disputing his right to the hereditary excise, though this seems to have been questioned in debate; but the commons soon displayed a considerable reluctance to grant the temporary revenue for the king's life. This had usually been done in the first parliament of every reign. But the accounts for which they called on this occasion exhibited so considerable an increase of the receipts on one hand, so alarming a disposition of the expenditure on the other, that they deemed it expedient to restrain a liberality which was not only likely to go beyond their intention, but to place them, at least in future times, too much within the power of the crown. Its average expenses appeared to have been £1,700,000. Of this £610,000 was the charge of the late king's army, and £83,493 of the ordnance. Nearly £90,000 was set under the suspicious head of secret service, imprested to Mr. Guy, secretary of the treasury. Thus it was evident that, far from

sinking below the proper level, as had been the general complaint of the court in the Stuart reigns, the revenue was greatly and dangerously above it; and its excess might either be consumed in unnecessary luxury, or diverted to the worse purposes of despotism and corruption. They had, indeed, just declared a standing army to be illegal. But there could be no such security for the observance of this declaration as the want of means in the crown to maintain one. Their experience of the interminable contention about supply, which had been fought with various success between the kings of England and their parliaments for some hundred years, dictated a course to which they wisely and steadily adhered, and to which, perhaps, above all other changes at this revolution, the augmented authority of the house of commons must be ascribed.

§ 10. They began by voting that £1,200,000 should be the annual revenue of the crown in time of peace; and that one-half of this should be appropriated to the maintenance of the king's government and royal family, or what is now called the civil list, the other to the public expense and contingent expenditure. The breaking out of an eight years' war rendered it impossible to carry into effect these resolutions as to the peace establishment; but they did not lose sight of their principle, that the king's regular and domestic expenses should be determined by a fixed annual sum, distinct from the other departments of public service. They speedily improved upon their original scheme of a definite revenue, by taking a more close and constant superintendence of these departments—the navy, army, and ordnance. Estimates of the probable expenditure were regularly laid before them, and the supply granted was strictly appropriated to each particular service.

This great and fundamental principle, as it has long been justly considered, that the money voted by parliament is appropriated, and can only be applied, to certain specified heads of expenditure, was introduced, as I have before mentioned, in the reign of Charles II., and generally, though not in every instance, adopted by his parliament. The unworthy house of commons that sat in 1685, not content with a needless augmentation of the revenue, took credit with the king for not having appropriated their supplies. But from the Revolution it has been the invariable usage. The lords of the treasury, by a clause annually repeated in the appropriation act of every session, are forbidden, under severe penalties, to order by their warrant any moneys in the exchequer, so ap-

propriated, from being issued for any other service, and the officers of the exchequer to obey any such warrant. This has given the house of commons so effectual a control over the executive power, or, more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for. In time of war, or in circumstances that may induce war, it has not been very uncommon to deviate a little from the rule of appropriation, by a grant of considerable sums on a vote of credit, which the crown is thus enabled to apply at its discretion during the recess of parliament; and we have had also too frequent experience that the charges of public service have not been brought within the limits of the last year's appropriation. But the general principle has not, perhaps, been often transgressed without sufficient reason; and a house of commons would be deeply responsible to the country, if through supine confidence it should abandon that high privilege which has made it the arbiter of court factions, and the regulator of foreign connections. It is to this transference of the executive government (for the phrase is hardly too strong) from the crown to the two houses of parliament, and especially the commons, that we owe the proud attitude which England has maintained since the Revolution, so extraordinarily dissimilar, in the eyes of Europe, to her condition under the Stuarts. The supplies, meted out with niggardly caution by former parliaments to sovereigns whom they could not trust, have flowed with redundant profuseness when they could judge of their necessity and direct their application. Doubtless the demand has always been fixed by the ministers of the crown, and its influence has retrieved in some degree the loss of authority; but it is still true that no small portion of the executive power, according to the established laws and customs of our government, has passed into the hands of that body which prescribes the application of the revenue, as well as investigates at its pleasure every act of the administration.

§ 11. The convention parliament continued the revenue as it already stood until December, 1690. Their successors complied so far with the king's expectation as to grant the excise duties, besides those that were hereditary, for the lives of William and Mary, and that of the survivor. The customs they only continued for four years. They provided extraordinary supplies for the conduct of the war on a scale of arma-

ment, and consequently of expenditure, unparalleled in the annals of England. But the hesitation, and, as the king imagined, the distrust they had shown in settling the ordinary revenue, sunk deep into his mind, and chiefly alienated him from the whigs, who were stronger and more conspicuous than their adversaries in the two sessions of 1689.

The desire of rule in William III. was as magnanimous and public-spirited as ambition can ever be in a human bosom. It was the consciousness not only of having devoted himself to a great cause, the security of Europe, and especially of Great Britain and Holland, against unceasing aggression, but of resources in his own firmness and sagacity which no other person possessed. A commanding force, a copious revenue, a supreme authority in councils, were not sought, as by the crowd of kings, for the enjoyment of selfish vanity and covetousness, but as the only sure instruments of success in his high calling, in the race of heroic enterprise which Providence had appointed for the elect champion of civil and religious liberty. We can hardly wonder that he should not quite render justice to the motives of those who seemed to impede his strenuous energies; that he should resent as ingratitude those precautions against abuse of power by him, the recent deliverer of the nation, which it had never called for against those who had sought to enslave it.

But, reasonable as this apology may be, it was still an unhappy error of William that he did not sufficiently weigh the circumstances which had elevated him to the English throne, and the alteration they had inevitably made in the relations between the crown and the parliament. It was certainly not for the sake of replacing James by William, with equal powers of doing injury, that the purest and wisest patriots engaged in that cause, but as the sole means of making a royal government permanently compatible with freedom and justice. The bill of rights had pretended to do nothing more than stigmatize some recent proceedings: were the representatives of the nation to stop short of other measures because they seemed novel and restrictive of the crown's authority, when for the want of them the crown's authority had nearly freed itself from all restriction? Such was their true motive for limiting the revenue, and such the ample justification of those important statutes enacted in the course of this reign, which the king, unfortunately for his reputation and peace of mind, too jealously resisted.

§ 12. It is by no means unusual to find mention of a commonwealth or republican party, as if it existed in some force

at the time of the Revolution, and throughout the reign of William III.; nay, some writers, such as Hume, Dalrymple, and Somerville, have, by putting them in a sort of balance against the Jacobites, as the extremes of the whig and tory factions, endeavored to persuade us that the one was as substantial and united a body as the other. It may, however, be confidently asserted that no republican party had any existence, if by that word we are to understand a set of men whose object was the abolition of our limited monarchy. There might unquestionably be persons, especially among the independent sect, who cherished the memory of what they called the good old cause, and thought civil liberty irreconcilable with any form of regal government. But these were too inconsiderable, and too far removed from political influence, to deserve the appellation of a party. I believe it would be difficult to name five individuals to whom even a speculative preference of a commonwealth may with probability be ascribed. Were it otherwise, the numerous pamphlets of this period would bear witness to their activity. Yet, with the exception, perhaps, of one or two, and those rather equivocal, we should search, I suspect, the collections of that time in vain for any manifestations of a republican spirit. If, indeed, an ardent zeal to see the prerogative effectually restrained, to vindicate that high authority of the house of commons over the executive administration which it has in fact claimed and exercised, to purify the house itself from corrupt influence, if a tendency to dwell upon the popular origin of civil society, and the principles which Locke, above other writers, had brought again into fashion, be called republican (as in a primary but less usual sense of the word they may), no one can deny that this spirit eminently characterized the age of William III. And schemes of reformation emanating from this source were sometimes offered to the world, trenching more, perhaps, on the established constitution than either necessity demanded or prudence warranted. But these were anonymous and of little influence; nor did they ever extend to the absolute subversion of the throne.

§ 13. William, however, was very early led to imagine, whether through the insinuations of lord Nottingham, as Burnet pretends, or the natural prejudice of kings against those who do not comply with them, that there not only existed a republican party, but that it numbered many supporters among the principal whigs. He dissolved the convention parliament, and gave his confidence for some time

to the opposite faction.[2] But among these, a real disaffection to his government prevailed so widely that he could with difficulty select men sincerely attached to it. The majority professed only to pay allegiance as to a sovereign de facto, and violently opposed the bill of recognition in 1690, both on account of the words "rightful and lawful king" which it applied to William, and of its declaring the laws passed in the last parliament to have been good and valid. They had influence enough with the king to defeat a bill proposed by the whigs, by which an oath of abjuration of James's right was to be taken by all persons in trust. It is by no means certain that even those who abstained from all connection with James after his loss of the throne would have made a strenuous resistance in case of his landing to recover it. But we know that a large proportion of the tories were engaged in a confederacy to support him. Almost every peer, in fact, of any consideration among that party, with the exception of lord Nottingham, is implicated by the secret documents which Macpherson and Dalrymple have brought to light; especially Godolphin, Carmarthen (Danby), and Marlborough, the second at that time prime minister of William (as he might justly be called), the last with circumstances of extraordinary and abandoned treachery toward his country as well as his allegiance. Two of the most distinguished whigs (and if the imputation is not fully substantiated against others by name, we know generally that many were liable to it) forfeited a high name among their contemporaries, in the eyes of a posterity which has known them better; the earl of Shrewsbury, from that strange feebleness of soul which hung like a spell upon his nobler qualities, and admiral Russell, from insolent pride and sullenness of temper. Both these were engaged in the vile intrigues of a faction they abhorred; but Shrewsbury soon learned again to revere the sovereign he had contributed to raise, and withdrew from the contamination of Jacobitism. It does not appear that he betrayed that trust which William is said with extraordinary magnanimity to have reposed on him, after a full knowledge of his connection with the court of St. Germain. But Russell, though compelled to win the battle of La Hogue against his will, took care to render his splendid victory as little advantageous as possible. The credulity and almost willful blindness of faction is strongly manifested in the conduct of the house of commons as to

[2] The sudden dissolution of this parliament cost him the hearts of those who had made him king.

the quarrel between this commander and the board of admiralty. They chose to support one who was secretly a traitor, because he bore the name of whig, tolerating his infamous neglect of duty and contemptible excuses, in order to pull down an honest though not very able minister who belonged to the tories. But they saw clearly that the king was betrayed, though mistaken, in this instance, as to the persons; and were right in concluding that the men who had effected the Revolution were in general most likely to maintain it; or, in the words of a committee of the whole house, "That his majesty be humbly advised, for the necessary support of his government, to employ in his councils and management of his affairs such persons only whose principles oblige them to stand by him and his right against the late king James, and all other pretenders whatsoever." It is plain from this and other votes of the commons that the tories had lost that majority which they seem to have held in the first session of this parliament.

§ 14. It is not, however, to be inferred, from this extensive combination in favor of the banished king, that his party embraced the majority of the nation, or that he could have been restored with any general testimonies of satisfaction. The friends of the Revolution were still by far the more powerful body. Even the secret emissaries of James confess that the common people were strongly prejudiced against his return. The hopes of that wretched victim of his own bigotry and violence rested less on the loyalty of his former subjects, or on their disaffection to his rival, than on the perfidious conspiracy of English statesmen and admirals, of lord-lieutenants and governors of towns, and on so numerous a French army as an ill-defended and disunited kingdom would be incapable to resist. He was to return, not as his brother, alone and unarmed, strong only in the consentient voice of the nation, but amidst the bayonets of 30,000 French auxiliaries. These were the pledges of just and constitutional rule which our patriot Jacobites invoked against the despotism of William III. It was from a king of the house of Stuart, from James II., from one thus encircled by the soldiers of Louis XIV., that we were to receive the guaranty of civil and religious liberty. Happily, the determined love of arbitrary power, burning unextinguished amidst exile and disgrace, would not permit him to promise, in any distinct manner, those securities which a large portion of his own adherents required. The Jacobite faction was divided between compounders and non-compounders: the one insisting on the

necessity of holding forth a promise of such new enactments upon the king's restoration as might remove all jealousies as to the rights of the church and people; the other, more agreeably to James's temper, rejecting every compromise with what they called the republican party at the expense of his ancient prerogative. In a declaration which he issued from St. Germain in 1692, there was so little acknowledgment of error, so few promises of security, so many exceptions from the amnesty he offered, that the wiser of his partisans in England were willing to insinuate that it was not authentic. This declaration, and the virulence of Jacobite pamphlets in the same tone, must have done harm to his cause. He published another declaration next year, at the earnest request of those who had seceded to his side from that of the Revolution, in which he held forth more specific assurances of consenting to a limitation of his prerogative. But no reflecting man could avoid perceiving that such promises wrung from his distress were illusory and insincere, that in the exultation of triumphant loyalty, even without the sword of the Gaul thrown into the scale of despotism, those who dreamed of a conditional restoration and of fresh guarantees for civil liberty would find, like the presbyterians of 1660, that it became them rather to be anxious about their own pardon, and to receive it as a signal boon of the king's clemency. The knowledge thus obtained of James's incorrigible obstinacy seems gradually to have convinced the disaffected that no hope for the nation or for themselves could be drawn from his restoration. His connections with the treacherous counselors of William grew weaker; and even before the peace of Ryswick it was evident that the aged bigot could never wield again the sceptre he had thrown away. The scheme of assassinating our illustrious sovereign, which some of James's desperate zealots had devised without his privity, as may charitably and even reasonably be supposed, gave a fatal blow to the interests of that faction. It was instantly seen that the murmurs of malcontent whigs had nothing in common with the disaffection of Jacobites. The nation resounded with an indignant cry against the atrocious conspiracy. An instrument of association abjuring the title of James, and pledging the subscribers to revenge the king's death after the mode of that in the reign of Elizabeth, was generally signed by both houses of parliament and throughout the kingdom. The adherents of the exiled family dwindled into so powerless a minority that they could make no sort of opposition to the act of settlement, and did not re-

cover an efficient character as a party till toward the latter end of the ensuing reign.

§ 15. Perhaps the indignation of parliament against those who sought to bring back despotism through civil war and the murder of an heroic sovereign was carried too far in the bill for attainting sir John Fenwick of treason. Two witnesses, required by our law in a charge of that nature, Porter and Goodman, had deposed before the grand jury to Fenwick's share in the scheme of invasion, though there is no reason to believe that he was privy to the intended assassination of the king. His wife subsequently prevailed on Goodman to quit the kingdom; and thus it became impossible to obtain a conviction in the course of law. This was the apology for a special act of the legislature, by which he suffered the penalties of treason. It did not, like some other acts of attainder, inflict a punishment beyond the offense, but supplied the deficiency of legal evidence. It was sustained by the production of Goodman's examination before the privy council, and by the evidence of two grand-jurymen as to the deposition he had made on oath before them, and on which they had found the bill of indictment. It was also shown that he had been tampered with by lady Mary Fenwick to leave the kingdom. This was undoubtedly as good secondary evidence as can well be imagined; and though in criminal cases such evidence is not admissible by courts of law, it was plausibly urged that the legislature might prevent Fenwick from taking advantage of his own underhand management, without transgressing the moral rules of justice, or even setting the dangerous precedent of punishing treason upon a single testimony. Yet, upon the whole, the importance of adhering to the stubborn rules of law in matters of treason is so weighty, and the difficulty of keeping such a body as the house of commons within any less precise limits so manifest, that we may well concur with those who thought sir John Fenwick much too inconsiderable a person to warrant such an anomaly. The jealous sense of liberty prevalent in William's reign produced a very strong opposition to this bill of attainder: it passed in each house, especially in the lords, by a small majority. Nor, perhaps, would it have been carried but for Fenwick's imprudent disclosure, in order to save his life, of some great statesmen's intrigues with the late king; a disclosure which he dared not, or was not in a situation to confirm, but which rendered him the victim of their fear and revenge. Russell, one of those accused, brought into the commons the bill of attainder;

Marlborough voted in favor of it, the only instance wherein he quitted the tories; Godolphin and Bath, with more humanity, took the other side; and Shrewsbury absented himself from the house of lords. It is now well known that Fenwick's discoveries went not a step beyond the truth. Their effect, however, was beneficial to the state; as, by displaying a strange want of secrecy in the court of St. Germain, Fenwick never having had any direct communication with those he accused, it caused Godolphin and Marlborough to break off their dangerous course of perfidy.

§ 16. Amidst these scenes of dissension and disaffection, and amidst the public losses and decline which aggravated them, we have scarce any object to contemplate with pleasure but the magnanimous and unconquerable soul of William. Mistaken in some parts of his domestic policy, unsuited by some failings of his character for the English nation, it is still to his superiority in virtue and energy over all her own natives in that age that England is indebted for the preservation of her honor and liberty; not at the crisis only of the Revolution, but through the difficult period that elapsed until the peace of Ryswick. A war of nine years, generally unfortunate, unsatisfactory in its result, carried on at a cost unknown to former times, amidst the decay of trade, the exhaustion of resources, the decline, as there seems good reason to believe, of population itself, was the festering wound that turned a people's gratitude into factiousness and treachery. It was easy to excite the national prejudices against campaigns in Flanders, especially when so unsuccessful, and to inveigh against the neglect of our maritime power. Yet, unless we could have been secure against invasion, which Louis would infallibly have attempted, had not his whole force been occupied by the grand alliance, and which, in the feeble condition of our navy and commerce, at one time could not have been impracticable, the defeats of Steenkirk and Landen might probably have been sustained at home. The war in 1689, and the great confederacy of Europe, which William alone could animate with any steadiness and energy, were most evidently and undeniably the means of preserving the independence of England. That danger, which has sometimes been in our countrymen's mouths with little meaning, of becoming a province to France, was then close and actual; for I hold the restoration of the house of Stuart to be but another expression for that ignominy and servitude.

§ 17. The expense, therefore, of this war must not be reck-

oned unnecessary; nor must we censure the government for that small portion of our debt which it was compelled to entail on posterity.[3] It is to the honor of William's administration, and of his parliaments, not always clear-sighted, but honest and zealous for the public weal, that they deviated so little from the praiseworthy, though sometimes impracticable, policy of providing a revenue commensurate with the annual expenditure. The supplies annually raised during the war were about five millions, more than double the revenue of James II. But a great decline took place in the produce of the taxes by which that revenue was levied. In 1693, the customs had dwindled to less than half their amount before the Revolution, the excise duties to little more than half. This rendered heavy impositions on land inevitable; a tax always obnoxious, and keeping up disaffection in the most powerful class of the community. The first land-tax was imposed in 1690, at the rate of three shillings in the pound on the rental; and it continued ever afterward to be annually granted, at different rates, but commonly at four shillings in the pound, till it was made perpetual in 1798. A tax of twenty per cent. might well seem grievous; and the notorious inequality of the assessment in different counties tended rather to aggravate the burden upon those whose contribution was the fairest. Fresh schemes of finance were devised, and, on the whole, patiently borne by a jaded people. The Bank of England rose under the auspices of the whig party, and materially relieved the immediate exigencies of the government, while it palliated the general distress by discounting bills and lending money at an easier rate of interest. Yet its notes were depreciated by twenty per cent. in exchange for silver; and exchequer tallies at least twice as much, till they were funded at an interest of eight per cent. But these resources generally falling very short of calculation, and being anticipated at such an exorbitant discount, a constantly increasing deficiency arose; and public credit sunk so low, that about the year 1696 it was hardly possible to pay the fleet and army from month to month, and a total bankruptcy seemed near at hand. These distresses again were enhanced by the depreciation of the circulating coin, and by the bold remedy of a re-coinage, which made the immediate stagnation of commerce more complete. The mere operation of

[3] The debt at the king's death amounted to £16,394,702, of which above three millions were to expire in 1710. Of this sum £664,263 was incurred before the Revolution, being a part of the money of which Charles II. had robbed the public creditor by shutting up the exchequer.

exchanging the worn silver coin for the new, which Mr. Montague had the courage to do without lowering the standard, cost the government two millions and a half. Certainly the vessel of our commonwealth has never been so close to shipwreck as in this period; we have seen the storm raging in still greater terror round our heads, but with far stouter planks and tougher cables to confront and ride through it.

Those who accused William of neglecting the maritime force of England knew little what they said, or cared little about its truth. A soldier and a native of Holland, he naturally looked to the Spanish Netherlands as the theatre on which the battle of France and Europe was to be fought. It was by the possession of that country and its chief fortresses that Louis aspired to hold Holland in vassalage, to menace the coasts of England, and to keep the Empire under his influence. Meanwhile, the naval annals of this war added much to our renown; Russell, glorious in his own despite at La Hogue, Rooke, and Shovel kept up the honor of the English flag. After that great victory, the enemy never encountered us in battle; and the wintering of the fleet at Cadiz in 1694, a measure determined on by William's energetic mind, against the advice of his ministers, and in spite of the fretful insolence of the admiral, gave us so decided a pre-eminence both in the Atlantic and Mediterranean seas, that it is hard to say what more could have been achieved by the most exclusive attention to the navy.

§ 18. The treaty of Ryswick was concluded on at least as fair terms as almost perpetual ill fortune could warrant us to expect. It compelled Louis XIV. to recognize the king's title, and thus both humbled the court of St. Germain, and put an end for several years to its intrigues. It extinguished, or rather the war itself had extinguished, one of the bold hopes of the French court—the scheme of procuring the election of the dauphin to the Empire. It gave at least a breathing-time to Europe, so long as the feeble lamp of Charles II.'s life should continue to glimmer, during which the fate of his vast succession might possibly be regulated without injury to the liberties of Europe.[4] But to those who looked with the king's eyes on the prospects of the continent, this pacification could appear nothing else than a preliminary armistice of vigilance and preparation. He knew that the Spanish dominions, or at least as large a portion of them as

[4] The peace of Ryswick was absolutely necessary, not only on account of the defection of the duke of Savoy, and the manifest disadvantage with which the allies carried on the war, but because public credit in England was almost annihilated, and it was hardly possible to pay the army.

could be grasped by a powerful arm, had been for more than thirty years the object of Louis XIV. The queen's renunciation of her right of succession was invalid in the jurisprudence of his court. By the queen of France's death, her claim upon the inheritance of Spain had devolved upon the dauphin; so that ultimately, and virtually in the first instance, the two great monarchies would be consolidated, and a single will would direct a force much more than equal to all the rest of Europe. If we admit that every little oscillation in the balance of power has sometimes been too minutely regarded by English statesmen, it would be absurd to contend that such a subversion of it as the union of France and Spain under one head did not most seriously threaten both the independence of England and Holland.

§ 19. The house of commons which sat at the conclusion of the treaty of Ryswick, chiefly composed of whigs, and having zealously co-operated in the prosecution of the late war, could not be supposed lukewarm in the cause of liberty, or indifferent to the aggrandizement of France. But the nation's exhausted state seemed to demand an intermission of its burdens, and revived the natural and laudable disposition to frugality which had characterized in all former times an English parliament. The arrears of the war, joined to loans made during its progress, left a debt of about seventeen millions, which excited much inquietude, and evidently could not be discharged but by steady retrenchment and uninterrupted peace. But, besides this, a reluctance to see a standing army established prevailed among the great majority both of whigs and tories. It was unknown to their ancestors—this was enough for one party; it was dangerous to liberty—this alarmed the other. It was not sufficiently remembered that the bill of rights, the annual mutiny bill, the necessity of annual votes of supply for the maintenance of a regular army, besides, what was far more than all, the publicity of all acts of government, and the strong spirit of liberty burning in the people, had materially diminished a danger which it would not be safe entirely to contemn.

Such, however, was the influence of what may be called the constitutional antipathy of the English in that age to a regular army, that the commons, in the first session after the peace, voted that all troops raised since 1680 should be disbanded, reducing the forces to about 7000 men, which they were with difficulty prevailed upon to augment to 10,000. They resolved at the same time that, "in a just sense and acknowledgment of what great things his majesty has done

for these kingdoms, a sum not exceeding £700,000 be granted to his majesty during his life for the support of the civil list." So ample a gift from an impoverished nation is the strongest testimony of their affection to the king. But he was justly disappointed by the former vote, which, in the hazardous condition of Europe, prevented this country from wearing a countenance of preparation, more likely to avert than to bring on a second conflict. He permitted himself, however, to carry this resentment too far, and lost sight of that subordination to the law which is the duty of an English sovereign, when he evaded compliance with this resolution of the commons, and took on himself the unconstitutional responsibility of leaving sealed orders, when he went to Holland, that 16,000 men should be kept up, without the knowledge of his ministers, which they as unconstitutionally obeyed. In the next session, a new parliament having been elected, full of men strongly imbued with what the courtiers styled commonwealth principles, or an extreme jealousy of royal power, it was found impossible to resist a diminution of the army to 7000 troops. These, too, were voted to be natives of the British dominions; and the king incurred the severest mortification of his reign in the necessity of sending back his regiments of Dutch guards and French refugees. The foreign troops were too numerous, and it would have been politic to conciliate the nationality of the multitude by reducing their number; yet they had claims which a grateful and generous people should not have forgotten: they were many of them the chivalry of protestantism, the Huguenot gentlemen who had lost all but their swords in a cause which we deemed our own; they were the men who had terrified James from Whitehall, and brought about a deliverance which, to speak plainly, we had neither sense nor courage to achieve for ourselves, or which at least we could never have achieved without enduring the convulsive throes of anarchy.

§ 20. There is, if not more apology for the conduct of the commons, yet more to censure on the king's side, in another scene of humiliation which he passed through in the business of the Irish forfeitures. These confiscations of the property of those who had fought on the side of James, though, in a legal sense, at the crown's disposal, ought undoubtedly to have been applied to the public service. It was the intention of parliament that two-thirds at least of these estates should be sold for that purpose; and William had, in answer to an address (January, 1690), promised to make no grant of them till the matter should be considered in the ensuing session.

Several bills were brought in to carry the original resolutions into effect, but, probably through the influence of government, they always fell to the ground in one or other house of parliament. Meanwhile the king granted away the whole of these forfeitures, about a million of acres, with a culpable profuseness, to the enriching of his personal favorites, such as the earl of Portland and the countess of Orkney. Yet, as this had been done in the exercise of a lawful prerogative, it is not easy to justify the act of resumption passed in 1699. The precedents for resumption of grants were obsolete, and from bad times. It was agreed on all hands that the royal domain is not inalienable; if this were a mischief, as could not, perhaps, be doubted, it was one that the legislature had permitted with open eyes till there was nothing left to be alienated.

But, even if the resumption of William's Irish grants could be reckoned defensible, there can be no doubt that the mode adopted by the commons, of tacking, as it was called, the provisions for this purpose to a money bill, so as to render it impossible for the lords even to modify them without depriving the king of his supply, tended to subvert the constitution and annihilate the rights of a co-equal house of parliament. This most reprehensible device, though not an unnatural consequence of their pretended right to an exclusive concern in money bills, had been employed in a former instance during this reign. They were again successful on this occasion; the lords receded from their amendments, and passed the bill at the king's desire, who perceived that the fury of the commons was tending to a terrible convulsion. But the precedent was infinitely dangerous to their legislative power. If the commons, after some more attempts of the same nature, desisted from so unjust an encroachment, it must be attributed to that which has been the great preservative of the equilibrium in our government, the public voice of a reflecting people, averse to manifest innovation, and soon offended by the intemperance of factions.

§ 21. The essential change which the fall of the old dynasty had wrought in our constitution displayed itself in such a vigorous spirit of inquiry and interference of parliament with all the course of government as, if not absolutely new, was more uncontested and more effectual than before the Revolution. The commons, indeed, under Charles II. had not wholly lost sight of the precedents which the long parliament had established for them; though with continual resistance from the court, in which their right of examination was by no

means admitted. But the tories throughout the reign of William evinced a departure from the ancient principles of their faction in nothing more than in asserting to the fullest extent the powers and privileges of the commons; and, in the coalition they formed with the malcontent whigs, if the men of liberty adopted the nickname of the men of prerogative, the latter did not less take up the maxims and feelings of the former. The bad success and suspected management of public affairs co-operated with the strong spirit of party to establish this important accession of authority to the house of commons. In June, 1689, a special committee was appointed to inquire into the miscarriages of the war in Ireland, especially as to the delay in relieving Londonderry. A similar committee was appointed in the lords. The former reported severely against colonel Lundy, governor of that city; and the house addressed the king, that he might be sent over to be tried for the treasons laid to his charge. I do not think there is any earlier precedent in the Journals for so specific an inquiry into the conduct of a public officer, especially one in military command. It marks, therefore, very distinctly the change of spirit which I have so frequently mentioned. No courtier has ever since ventured to deny this general right of inquiry, though it is a frequent practice to elude it. The right to inquire draws with it the necessary means, the examination of witnesses, records, papers, enforced by the strong arm of parliamentary privilege. In one respect alone these powers have fallen rather short; the commons do not administer an oath; and having neglected to claim this authority in the irregular times when they could make a privilege by a vote, they would now, perhaps, find difficulty in obtaining it by consent of the house of peers. They renewed this committee for inquiring into the miscarriages of the war in the next session. They went very fully into the dispute between the board of admiralty and admiral Russell after the battle of La Hogue; and the year after, investigated the conduct of his successors, Killigrew and Delaval, in the command of the Channel fleet. They went, in the winter of 1694, into a very long examination of the admirals and the orders issued by the admiralty during the preceding year; and then voted that the sending the fleet to the Mediterranean, and the continuing it there this winter, has been to the honor and interest of his majesty and his kingdoms. But it is hardly worth while to enumerate later instances of exercising a right which had become indisputable, and, even before it rested on the basis of precedent, could not

reasonably be denied to those who might advise, remonstrate, and impeach.

§ 22. The general unpopularity of William's administration, and more particularly the reduction of the forces, afford an ample justification for the two treaties of partition, which the tory faction, with scandalous injustice and inconsistency, turned to his reproach. No one could deny that the aggrandizement of France by both of these treaties was of serious consequence. But, according to English interests, the first object was to secure the Spanish Netherlands from becoming provinces of that power; the next to maintain the real independence of Spain and the Indies. Italy was but the last in order; and though the possession of Naples and Sicily, with the ports of Tuscany, as stipulated in the treaty of partition, would have rendered France absolute mistress of that whole country and of the Mediterranean sea, and essentially changed the balance of Europe, it was yet more tolerable than the acquisition of the whole monarchy in the name of a Bourbon prince, which the opening of the succession without previous arrangement was likely to produce. They at least who shrunk from the thought of another war, and studiously depreciated the value of continental alliances, were the last who ought to have exclaimed against a treaty which had been ratified as the sole means of giving us something like security without the cost of fighting for it. Nothing, therefore, could be more unreasonable than the clamor of a tory house of commons in 1701 (for the malcontent whigs were now so consolidated with the tories as in general to bear their name) against the partition treaties; nothing more unfair than the impeachment of the four lords, Portland, Orford, Somers, and Halifax, on that account. But we must at the same time remark, that it is more easy to vindicate the partition treaties themselves, than to reconcile the conduct of the king and of some others with the principles established in our constitution. William had taken these important negotiations wholly into his own hands, not even communicating them to any of his English ministers, except lord Jersey, until his resolution was finally settled. Lord Somers, as chancellor, had put the great seal to blank powers, as a legal authority to the negotiators, which evidently could not be valid, unless on the dangerous principle that the seal is conclusive against all exception. He had also sealed the ratification of the treaty, though not consulted upon it, and though he seems to have had objections to some of the terms; and in both instances he set up the king's command as a sufficient

defense. The exclusion of all those whom, whether called privy or cabinet councilors, the nation holds responsible for its safety, from this great negotiation, tended to throw back the whole executive government into the single will of the sovereign, and ought to have exasperated the house of commons far more than the actual treaties of partition, which may probably have been the safest choice in a most perilous condition of Europe. The impeachments, however, were in most respects so ill substantiated by proof, that they have generally been reckoned a disgraceful instance of party spirit.

§ 23. The whigs, such of them at least as continued to hold that name in honor, soon forgave the mistakes and failings of their great deliverer; and, indeed, a high regard for the memory of William III. may justly be reckoned one of the tests by which genuine whiggism, as opposed both to tory and republican principles, has always been recognized. By the opposite party he was rancorously hated; and their malignant calumnies still sully the stream of history. Let us leave such as prefer Charles I. to William III. in the enjoyment of prejudices which are not likely to be overcome by argument. But it must ever be an honor to the English crown that it has been worn by so great a man. Compared with him, the statesmen who surrounded his throne, the Sunderlands, Godolphins, and Shrewsburys, even the Somerses and Montagues, sink into insignificance. He was in truth too great, not for the times wherein he was called to action, but for the peculiar condition of a king of England after the Revolution; and as he was the last sovereign of this country whose understanding and energy of character have been very distinguished, so was he the last who has encountered the resistance of his parliament, or stood apart and undisguised in the maintenance of his own prerogative. His reign is no doubt one of the most important in our constitutional history, both on account of its general character, which I have slightly sketched, and of those beneficial alterations in our law to which it gave rise. These now call for our attention.

§ 24. The enormous duration of seventeen years, for which Charles II. protracted his second parliament, turned the thoughts of all who desired improvements in the constitution toward some limitation on a prerogative which had not hitherto been thus abused. The term of three years appeared sufficient to establish a control of the electoral over the representative body, without recurring to the ancient but inconvenient scheme of annual parliaments, which men enamored of a still more popular form of government than

our own were eager to recommend. A bill for this purpose was brought into the house of lords in December, 1689, but lost by the prorogation. It passed both houses early in 1693, the whigs generally supporting, and the tories opposing it; but on this, as on many other great questions of this reign, the two parties were not so regularly arrayed against each other as on points of a more personal nature. To this bill the king refused his assent: an exercise of prerogative which no ordinary circumstances can reconcile either with prudence or with a constitutional administration of government, but which was too common in this reign. But the commons, as it was easy to foresee, did not abandon so important a measure; a similar bill received the royal assent in November, 1694. By the triennial bill it was simply provided that every parliament should cease and determine within three years from its meeting. The clause contained in the act of Charles II. against the intermission of parliaments for more than three years is repeated; but it was not thought necessary to revive the somewhat violent and perhaps impracticable provisions by which the act of 1641 had secured their meeting, it being evident that even annual sessions might now be relied upon as indispensable to the machine of government.

This annual assembly of parliament was rendered necessary, in the first place, by the strict appropriation of the revenue according to votes of supply. It was secured, next, by passing the mutiny bill, under which the army is held together, and subjected to military discipline, for a short term, seldom or never exceeding twelve months. These are the two effectual securities against military power: that no pay can be issued to the troops without a previous authorization by the commons in a committee of supply, and by both houses in an act of appropriation; and that no officer or soldier can be punished for disobedience, nor any court-martial held, without the annual re-enactment of the mutiny bill. Thus it is strictly true that, if the king were not to summon parliament every year, his army would cease to have a legal existence, and the refusal of either house to concur in the mutiny bill would at once wrest the sword out of his grasp. By the bill of rights it is declared unlawful to keep any forces in time of peace without consent of parliament. This consent, by an invariable and wholesome usage, is given only from year to year; and its necessity may be considered perhaps the most powerful of those causes which have transferred so much even of the executive power into the management of the two houses of parliament.

§ 25. The reign of William is also distinguished by the provisions introduced into our law for the security of the subject against iniquitous condemnations on the charge of high treason, and intended to perfect those of earlier times, which had proved insufficient against the partiality of judges.[5]

A bill for regulating trials upon charges of high treason passed the commons, with slight resistance from the crown lawyers, in 1691. The lords introduced a provision in their own favor, that, upon the trial of a peer in the court of the high steward, all such as were entitled to vote should be regularly summoned, it having been the practice to select twenty-three at the discretion of the crown. Those who wished to hinder the bill availed themselves of the jealousy which the commons in that age entertained of the upper house of parliament, and persuaded them to disagree with this just and reasonable amendment. It fell to the ground, therefore, on this occasion, and, though more than once revived in subsequent sessions, the same difference between the two houses continued to be insuperable. In the new parliament that met in 1695, the commons had the good sense to recede from an irrational jealousy. Notwithstanding the reluctance of the ministry, for which perhaps the very dangerous position of the king's government furnishes an apology, this excellent statute was enacted as an additional guaranty (in such bad times as might again occur) to those who are prominent in their country's cause, against the great danger of false accusers and iniquitous judges. It provides that all persons indicted for high treason shall have a copy of their indictment delivered to them five days before their trial, a period extended by a subsequent act to ten days, and a copy of the panel of jurors two days before their trial; that they shall be allowed to have their witnesses examined on oath, and to make their defense by counsel. It clears up any doubt that could be pretended on the statute of Edward VI., by requiring two witnesses, either both to the same overt act, or the first to one, the second to another overt act of the same treason (that is, the same kind of treason), unless the party shall voluntarily confess the charge. It limits prosecutions for treason to the term of three years, except in the case of an attempted assassination on the king. It includes the contested provision for the trial of peers by all who have a right to sit and vote in parliament. A later statute, 7 Anne, c. 21, which may be mentioned here as the

[5] The disquisition of the author upon the history of our constitutional law on treason from the beginning is inserted as a note at the end of this chapter.

complement of the former, has added a peculiar privilege to the accused, hardly less material than any of the rest. Ten days before the trial, a list of the witnesses intended to be brought for proving the indictment, with their professions and places of abode, must be delivered to the prisoner, along with the copy of the indictment. The operation of this clause was suspended till after the death of the pretended prince of Wales.

Notwithstanding a hasty remark of Burnet, that the design of this bill seemed to be to make men as safe in all treasonable practices as possible, it ought to be considered a valuable accession to our constitutional law; and no part, I think, of either statute will be reckoned inexpedient, when we reflect upon the history of all nations, and more especially of our own. The history of all nations, and more especially of our own, in the fresh recollection of those who took a share in these acts, teaches us that false accusers are always encouraged by a bad government, and may easily deceive a good one. A prompt belief in the spies whom they perhaps necessarily employ, in the voluntary informers who dress up probable falsehoods, is so natural and constant in the offices of ministers, that the best are to be heard with suspicion when they bring forward such testimony. And as men who are accused of conspiracy against a government are generally such as are beyond question disaffected to it, the indiscriminating temper of the prejudging people from whom juries must be taken is as much to be apprehended, when it happens to be favorable to authority, as that of the government itself; and requires as much the best securities, imperfect as the best are, which prudence and patriotism can furnish to innocence. That the prisoner's witnesses should be examined on oath will of course not be disputed, since by a subsequent statute that strange and unjust anomaly in our criminal law has been removed in all cases as well as in treason; but the judges had sometimes not been ashamed to point out to the jury, in derogation of the credit of those whom a prisoner called in his behalf, that they were not speaking under the same sanction as those for the crown. It was not less reasonable that the defense should be conducted by counsel; since that excuse which is often made for denying the assistance of counsel on charges of felony, namely, the moderation of prosecutors and the humanity of the bench, could never be urged in those political accusations wherein the advocates for the prosecution contend with all their strength for victory; and the impartiality of the court is rather praised

when it is found than relied upon beforehand.[6] Nor does there lie, perhaps, any sufficient objection even to that which many dislike, which is more questionable than the rest, the furnishing a list of the witnesses to the prisoner, when we set on the other side the danger of taking away innocent lives by the testimony of suborned and infamous men, and remember also that a guilty person can rarely be ignorant of those who will bear witness against him; or if he could, that he may always discover those who have been examined before the grand jury.

The subtlety of the crown lawyers in drawing indictments for treason, and sometimes the willingness of judges to favor such prosecutions, have considerably eluded the chief difficulties which the several statutes appear to throw in their way. The government has at least had no reason to complain that the construction of those enactments has been too rigid. The overt acts laid in the indictment are expressed so generally that they give sometimes little insight into the particular circumstances to be adduced in evidence; and, though the act of William is positive that no evidence shall be given of any overt act not laid in the indictment, it has been held allowable, and is become the constant practice, to bring forward such evidence, not as substantive charges, but on the pretense of its tending to prove certain other acts specially alleged. The disposition to extend a constructive interpretation to the statute of Edward III. has continued to increase; and was carried, especially by chief-justice Eyre, in the trials of 1794, to a length at which we lose sight altogether of the plain meaning of words, and apparently much beyond what Pemberton, or even Jefferies, had reached. In the vast mass of circumstantial testimony which our modern trials for high treason display, it is sometimes difficult to discern whether the great principle of our law, requiring two witnesses to overt acts, has been adhered to; for certainly it is not adhered to, unless such witnesses depose to acts of the prisoner from which an inference of his guilt is immediately deducible. There can be no doubt that state prosecutions

[6] The dexterity with which lord Shaftesbury (the author of the "Characteristics"), at that time in the house of commons, turned a momentary confusion which came upon him while speaking on this bill, into an argument for extending the aid of counsel to those who might so much more naturally be embarrassed on a trial for their lives, is well known. All well-informed writers ascribe this to Shaftesbury. But Johnson, in the "Lives of the Poets," has, through inadvertence, as I believe, given lord Halifax (Montagu) the credit of it; and some have since followed him. As a complete refutation of this mistake, it is sufficient to say that Mr. Montagu *opposed* the bill. His name appears as a teller on two divisions, 31st December, 1691, and 18th November, 1692.

have long been conducted with an urbanity and exterior moderation unknown to the age of the Stuarts, or even to that of William; but this may by possibility be compatible with very partial wresting of the law, and the substitution of a sort of political reasoning for that strict interpretation of penal statutes which the subject has a right to demand. No confidence in the general integrity of a government, much less in that of its lawyers, least of all any belief in the guilt of an accused person, should beguile us to remit that vigilance which is peculiarly required in such circumstances.

§ 26. For this vigilance, and, indeed, for almost all that keeps up in us, permanently and effectually, the spirit of regard to liberty and the public good, we must look to the unshackled and independent energies of the press. In the reign of William III., and through the influence of the popular principle in our constitution, this finally became free. The licensing act, suffered to expire in 1679, was revived in 1685 for seven years. In 1692, it was continued till the end of the session of 1693. Several attempts were afterward made to renew its operation, which the less courtly whigs combined with the tories and Jacobites to defeat. Both parties, indeed, employed the press with great diligence in this reign. Even during the existence of a censorship, a host of unlicensed publications, by the negligence or connivance of the officers employed to seize them, bore witness to the inefficacy of its restrictions. The bitterest invectives of Jacobitism were circulated in the first four years after the Revolution.

The liberty of the press consists, in a strict sense, merely in an exemption from the superintendence of a licenser. But it can not be said to exist in any security, or sufficiently for its principal ends, where discussions of a political or religious nature, whether general or particular, are restrained by too narrow and severe limitations. The law of libel has always been indefinite—an evil probably beyond any complete remedy, but which evidently renders the liberty of free discussion rather more precarious in its exercise than might be wished. It appears to have been the received doctrine in Westminster Hall before the Revolution, that no man might publish a writing reflecting on the government, nor upon the character or even capacity and fitness of any one employed in it. Nothing having passed to change the law, the law remained as before. Hence, in the case of Tutchin, it is laid down by Holt that to possess the people with an ill opinion of the government—that is, of the ministry—is a libel. And the attorney-general, in his speech for the prosecution, urges

that there can be no reflection on those that are in office under her majesty, but it must cast some reflection on the queen who employs them. Yet, in this case, the censure upon the administration, in the passages selected for prosecution, was merely general, and without reference to any person, upon which the counsel for Tutchin vainly relied.

It is manifest that such a doctrine was irreconcilable with the interests of any party out of power, whose best hope to regain it is commonly by prepossessing the nation with a bad opinion of their adversaries. Nor would it have been possible for any ministry to stop the torrent of a free press, under the secret guidance of a powerful faction, by a few indictments for libel. They found it generally more expedient and more agreeable to borrow weapons from the same armory, and retaliate with unsparing invective and calumny. This was first practiced (first, I mean, with the avowed countenance of government) by Swift, in the "Examiner" and some of his other writings. And both parties soon went such lengths in this warfare, that it became tacitly understood that the public characters of statesmen and the measures of administration are the fair topics of pretty severe attack.[7] Less than this, indeed, would not have contented the political temper of the nation, gradually and without intermission becoming more democratical, and more capable, as well as more accustomed, to judge of its general interests and of those to whom they were intrusted. The just limit between political and private censure has been far better drawn in these later times, licentious as we still may justly deem the press, than in an age when courts of justice had not deigned to acknowledge, as they do at present, its theoretical liberty. No writer, except of the most broken reputation, would venture at this day on the malignant calumnies of Swift.

§ 27. Meanwhile the judges naturally adhered to their established doctrine; and, in prosecutions for political libels, were very little inclined to favor what they deemed the presumption, if not the licentiousness, of the press. They advanced a little farther than their predecessors; and, contrary to the practice both before and after the Revolution, laid it

[7] The reign of Anne was the era of *periodical* politics. Gutta cavat lapidem, non vi, sed sæpe cadendo. We well know how forcibly this line describes the action of the regular press. It did not begin to operate much before 1704 or 1705, when the whigs came into office, and the rejection of the occasional conformity bill blew up a flame in the opposite party. But even then it was confined to periodical papers, such as the *Observator* or *Rehearsal;* for the common newspapers were as yet hardly at all political.

down at length as an absolute principle, that falsehood, though always alleged in the indictment, was not essential to the guilt of the libel; refusing to admit its truth to be pleaded, or given in evidence, or even urged by way of mitigation of punishment. But as the defendant could only be convicted by the verdict of a jury, and jurors both partook of the general sentiment in favor of free discussion, and might in certain cases have acquired some prepossessions as to the real truth of the supposed libel, which the court's refusal to enter upon it could not remove, they were often reluctant to find a verdict of guilty; and hence arose by degrees a sort of contention which sometimes showed itself upon trials, and divided both the profession of the law and the general public. The judges and lawyers, for the most part, maintained that the province of the jury was only to determine the fact of publication; and also whether what are called the innuendoes were properly filled up—that is, whether the libel meant that which it was alleged in the indictment to mean, not whether such meaning were criminal or innocent, a question of law which the court were exclusively competent to decide. That the jury might acquit at their pleasure was undeniable; but it was asserted that they would do so in violation of their oaths and duty, if they should reject the opinion of the judge by whom they were to be guided as to the general law. Others of great name in our jurisprudence, and the majority of the public at large, conceiving that this would throw the liberty of the press altogether into the hands of the judges, maintained that the jury had a strict right to take the whole matter into their consideration, and determine the defendant's criminality or innocence according to the nature and circumstances of the publication. This controversy, which perhaps hardly arose within the period to which the present work relates, was settled by Mr. Fox's libel bill in 1792. It declares the right of the jury to find a general verdict upon the whole matter; and though, from causes easy to explain, it is not drawn in the most intelligible and consistent manner, was certainly designed to turn the defendant's intention, as it might be laudable or innocent, seditious or malignant, into a matter of fact for their inquiry and decision.

§ 28. The Revolution is justly entitled to honor as the era of religious, in a far greater degree than of civil, liberty, the privileges of conscience having had no earlier magna charta and petition of right whereto they could appeal against encroachment. Civil, indeed, and religious liberty had ap-

peared, not as twin sisters and co-heirs, but rather in jealous and selfish rivalry; it was in despite of the law, it was through infringement of the constitution, by the court's connivance, by the dispensing prerogative, by the declarations of indulgence under Charles and James, that some respite had been obtained from the tyranny which those who proclaimed their attachment to civil rights had always exercised against one class of separatists, and frequently against another.

At the time when the test-law was enacted, chiefly with a view against popery, but seriously affecting the protestant non-conformists, it was the intention of the house of commons to afford relief to the latter by relaxing in some measure the strictness of the act of uniformity in favor of such ministers as might be induced to conform, and by granting an indulgence of worship to those who should persist in their separation. This bill, however, dropped in that session. Several more attempts at a union were devised by worthy men of both parties in that reign, but with no success. It was the policy of the court to withstand a comprehension of dissenters; nor would the bishops admit of any concession worth the others' acceptance. The high-church party would not endure any mention of indulgence. In the parliament of 1680, a bill to relieve protestant dissenters from the penalties of the 35th of Elizabeth, the most severe act in force against them, having passed both houses, was lost off the table of the house of lords at the moment that the king came to give his assent; an artifice by which he evaded the odium of an explicit refusal. Meanwhile the non-conforming ministers, and in many cases their followers, experienced a harassing persecution under the various penal laws that oppressed them; the judges, especially in the latter part of this reign, when some good magistrates were gone, and still more the justices of the peace, among whom a high-church ardor was prevalent, crowding the jails with the pious confessors of puritanism. Under so rigorous an administration of statute law, it was not unnatural to take the shelter offered by the declaration of indulgence; but the dissenters never departed from their ancient abhorrence of popery and arbitrary power, and embraced the terms of reconciliation and alliance which the church, in its distress, held out to them. A scheme of comprehension was framed under the auspices of archbishop Sancroft before the Revolution. Upon the completion of the new settlement, it was determined, with the apparent concurrence of the church, to grant an indulgence to sepa-

rate conventicles; and at the same time, by enlarging the terms of conformity, to bring back those whose differences were not irreconcilable within the pale of the Anglican communion.

The act of toleration was passed with little difficulty, though not without murmurs of the bigoted churchmen. It exempts from the penalties of existing statutes against separate conventicles, or absence from the established worship, such as should take the oath of allegiance, and subscribe the declaration against popery, and such ministers of separate congregations as should subscribe the thirty-nine articles of the church of England, except three and part of a fourth. It gives also an indulgence to quakers without this condition. Meeting-houses are required to be registered, and are protected from insult by a penalty. No part of this toleration is extended to papists, or to such as deny the Trinity. We may justly deem this act a very scanty measure of religious liberty, yet it proved more effectual through the lenient and liberal policy of the eighteenth century; the subscription to articles of faith, which soon became as obnoxious as that to matters of a more indifferent nature, having been practically dispensed with, though such a genuine toleration as Christianity and philosophy alike demand had no place in our statute-book before the reign of George III.

§ 29. It was found more impracticable to overcome the prejudices which stood against any enlargement of the basis of the English church. The bill of comprehension, though nearly such as had been intended by the primate, and conformable to the plans so often in vain devised by the most wise and moderate churchmen, met with a very cold reception. Those among the clergy who disliked the new settlement of the crown (and they were by far the greater part) played upon the ignorance and apprehensions of the gentry. A clause proposed in the bill for changing the oaths of supremacy and allegiance, in order to take away the necessity of receiving the sacrament in the church as a qualification for office, was rejected by a great majority of the lords, twelve whig peers protesting. Though the bill of comprehension proposed to parliament went no farther than to leave a few scrupled ceremonies at discretion, and to admit presbyterian ministers into the church without pronouncing on the invalidity of their former ordination, it was mutilated in passing through the upper house; and the commons, after entertaining it for a time, substituted an address to the king that he would call the house of convocations, "to be advised

with in ecclesiastical matters." It was of course necessary to follow this recommendation. But the lower house of convocation, as might be foreseen, threw every obstacle in the way of their king's enlarged policy. They chose a man as their prolocutor who had been forward in the worst conduct of the university of Oxford. They displayed in every thing a factious temper, which held the very names of concession and conciliation in abhorrence. Meanwhile a commission of divines, appointed under the great seal, had made a revision of the liturgy, in order to eradicate every thing which could give a plausible ground of offense, as well as to render the service more perfect. Those of the high-church faction had soon seceded from this commission;[8] and its deliberations were doubtless the more honest and rational for their absence. But, as the complacence of parliament toward ecclesiastical authority had shown that no legislative measure could be forced against the resistance of the lower house of convocation, it was not thought expedient to lay before that ill-affected body the revised liturgy, which they would have employed as an engine of calumny against the bishops and the crown. The scheme of comprehension, therefore, fell absolutely and finally to the ground.

§ 30. A similar relaxation of the terms of conformity would, in the reign of Elizabeth, or even at the time of the Savoy conferences, have brought back so large a majority of dissenters that the separation of the remainder could not have afforded any color of alarm to the most jealous dignitary. Even now it is said that two-thirds of the non-conformists would have embraced the terms of reunion. But the motives of dissent were already somewhat changed, and had come to turn less on the petty scruples of the elder puritans, and on the differences in ecclesiastical discipline, than on a dislike to all subscriptions of faith and compulsory uniformity. The dissenting ministers, accustomed to independence, and finding not unfrequently in the contributions of their disciples a better maintenance than court favor and private patronage have left for diligence and piety in the establishment, do not seem to have much regretted the fate of this measure. None of their friends, in the most favorable times, have ever made an attempt to renew it.

A still more material reason against any alteration in the

[8] The words high and low church are said by Swift in the *Examiner* to have come in soon after the Revolution. And probably they were not in common use before. But I find "high-church" named in a pamphlet of the reign of Charles II. It is in the Harleian Miscellany; but I have not got any more distinct reference.

public liturgy and ceremonial religion at that feverish crisis, unless with a much more decided concurrence of the nation than could be obtained, was the risk of nourishing the schism of the non-jurors. These men went off from the church on grounds merely political, or at most on the pretense that the civil power was incompetent to deprive bishops of their ecclesiastical jurisdiction; to which none among the laity, who did not adopt the same political tenets, were likely to pay attention. But the established liturgy was, as it is at present in the eyes of the great majority, the distinguishing mark of the Anglican church; far more, indeed, than episcopal government, whereof so little is known by the mass of the people that its abolition, if we may utter such a paradox, would make no perceptible difference in their religion. Any change, though for the better, would offend those prejudices of education and habit which it requires such a revolutionary commotion of the public mind as the sixteenth century witnessed to subdue, and might fill the Jacobite conventicles with adherents to the old church. It was already the policy of the non-juring clergy to hold themselves up in this respectable light, and to treat the Tillotsons and Burnets as equally schismatic in discipline and unsound in theology. Fortunately, however, they fell into the snare which the established church had avoided; and deviating, at least in their writings, from the received standard of Anglican orthodoxy, into what the people saw with most jealousy, a sort of approximation to the church of Rome, gave their opponents an advantage in controversy, and drew farther from that part of the clergy who did not much dislike their political creed. They were equally injudicious and neglectful of the signs of the times, when they promulgated such extravagant assertions of sacerdotal power as could not stand with the regal supremacy, or any subordination to the state. It was plain, from the writings of Leslie and other leaders of their party, that the mere restoration of the house of Stuart would not content them, without undoing all that had been enacted as to the church from the time of Henry VIII.; and thus the charge of innovation came evidently home to themselves.

§ 31. The convention parliament would have acted a truly politic as well as magnanimous part in extending this boon, or rather this right, of religious liberty to the members of that unfortunate church for whose sake the late king had lost his throne. It would have displayed to mankind that James had fallen, not as a catholic, nor for seeking to bestow

toleration on catholics, but as a violator of the constitution. William, in all things superior to his subjects, knew that temporal, and especially military fidelity, would be in almost every instance proof against the seductions of bigotry. The Dutch armies have always been in a great measure composed of catholics; and many of that profession served under him in the invasion of England. His own judgment for the repeal of the penal laws had been declared even in the reign of James. The danger, if any, was now immensely diminished; and it appears in the highest degree probable that a genuine toleration of their worship, with no condition but the oath of allegiance, would have brought over the majority of that church to the protestant succession, so far at least as to engage in no schemes inimical to it.

The tories, in their malignant hatred of our illustrious monarch, turned his connivance at popery into a theme of reproach. It was believed, and probably with truth, that he had made to his catholic allies promises of relaxing the penal laws; and the Jacobite intriguers had the mortification to find that William had his party at Rome, as well as her exiled confessor of St. Germain. After the peace of Ryswick many priests came over, and showed themselves with such incautious publicity as alarmed the bigotry of the house of commons, and produced the disgraceful act of 1700 against the growth of popery. The admitted aim of this statute was to expel the catholic proprietors of land, comprising many very ancient and wealthy families, by rendering it necessary for them to sell their estates. It first offers a reward of £100 to any informer against a priest exercising his functions, and adjudges the penalty of perpetual imprisonment. It requires every person educated in the popish religion, or professing the same, within six months after he shall attain the age of eighteen years, to take the oaths of allegiance and supremacy, and subscribe the declaration set down in the act of Charles II. against transubstantiation and the worship of saints; in default of which he is incapacitated, not only to purchase, but to inherit or take lands under any devise or limitation. The next of kin being a protestant shall enjoy such lands during his life.[9] So unjust, so unprovoked a persecution is the disgrace of that parliament. But the spirit of liberty and tolerance was too strong for the tyranny of the law; and this statute was not executed according to its purpose. The catholic land-holders neither renounced their

[9] 11 and 12 Wm. III., c. 4. It is hardly necessary to add that this act was repealed in 1779.

religion nor abandoned their inheritances. The judges put such constructions upon the clause of forfeiture as eluded its efficacy; and, I believe, there were scarce any instances of a loss of property under this law. The laws were perhaps not much less severe and sanguinary than those which oppressed the protestants of France; but, in their actual administration, what a contrast between the government of George II. and Louis XV.—between the gentleness of an English court of king's bench and the ferocity of the parliaments of Aix and Toulouse!

§ 32. The immediate settlement of the crown at the Revolution extended only to the descendants of Anne and of William. The former was at that time pregnant, and became in a few months the mother of a son. Nothing, therefore, urged the convention parliament to go any further in limiting the succession. But the king, in order to secure the elector of Hanover to the grand alliance, was desirous to settle the reversion of the crown on his wife, the princess Sophia, and her posterity. A provision to this effect was inserted in the bill of rights by the house of lords. But the commons rejected the amendment with little opposition; not, as Burnet idly insinuates, through the secret wish of a republican party (which never existed, or had no influence) to let the monarchy die a natural death, but from a just sense that the provision was unnecessary and might become inexpedient. During the life of the young duke of Gloucester the course of succession appeared clear; but upon his untimely death in 1700, the manifest improbability that the limitations already established could subsist beyond the lives of the king and princess of Denmark made it highly convenient to preclude intrigue, and cut off the hopes of the Jacobites, by a new settlement of the crown on a protestant line of princes. Though the choice was truly free in the hands of parliament, and no pretext of absolute right could be advanced on any side, there was no question that the princess Sophia was the fittest object of the nation's preference. She was, indeed, very far removed from any hereditary title. Besides the pretended prince of Wales, and his sister, whose legitimacy no one disputed, there stood in her way the duchess of Savoy, daughter of Henrietta duchess of Orleans, and several of the Palatine family. These last had abjured the reformed faith, of which their ancestors had been the strenuous assertors; but it seemed not improbable that some one might return to it; and if all hereditary right of the ancient English royal line, the descendants of Henry VII., had not been extinguished,

it would have been necessary to secure the succession of any prince who should profess the protestant religion at the time when the existing limitations should come to an end. According to the tenor and intention of the act of settlement, all prior claims of inheritance, save that of the issue of king William and the princess Anne, being set aside and annulled, the princess Sophia became the source of a new royal line. The throne of England and Ireland, by virtue of the paramount will of parliament, stands entailed upon the heirs of her body, being protestants. In them the right is as truly hereditary as it ever was in the Plantagenets or the Tudors. But they derive it not from those ancient families. The blood, indeed, of Cerdic and of the Conqueror flows in the veins of her present majesty. Our Edwards and Henries illustrate the almost unrivaled splendor and antiquity of the house of Brunswick; but they have transmitted no more right to the allegiance of England than Boniface of Este or Henry the Lion: that rests wholly on the act of settlement, and resolves itself into the sovereignty of the legislature.

The majority of that house of commons which passed the bill of settlement consisted of those who, having long opposed the administration of William, though with very different principles both as to the succession of the crown and its prerogative, were now often called by the general name of tories. Some, no doubt, of these were adverse to a measure which precluded the restoration of the house of Stuart, even on the contingency that its heir might embrace the protestant religion. But this party could not show itself very openly; and Harley, the new leader of the tories, zealously supported the entail of the crown on the princess Sophia. But it was determined to accompany this settlement with additional securities for the subject's liberty. The bill of rights was reckoned hasty and defective; some matters of great importance had been omitted, and, in the twelve years which had since elapsed, new abuses had called for new remedies. Eight articles were therefore inserted in the act of settlement, to take effect only from the commencement of the new limitation to the house of Hanover. Some of them, as will appear, sprung from a natural jealousy of this unknown and foreign line; some should, strictly, not have been postponed so long; but it is necessary to be content with what it is practicable to obtain.

§ 33. These articles are the following:

That whosoever shall hereafter come to the possession of

this crown shall join in communion with the church of England, as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defense of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

That no person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament.

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.

That, after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen—except such as are born of English parents), shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the crown to himself, or to any other or others in trust for him.

That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

That, after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but, upon the address of both houses of parliament, it may be lawful to remove them.

That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament.

The first of these provisions was well adapted to obviate the jealousy which the succession of a new dynasty, bred in a protestant church not altogether agreeing with our own, might excite in our susceptible nation. A similar apprehension of foreign government produced the second article, which so far limits the royal prerogative that any minister who could be proved to have advised or abetted a declaration of war in the specified contingency would be criminally

responsible to parliament. The third article was repealed very soon after the accession of George I., whose frequent journeys to Hanover were an abuse of the graciousness with which the parliament consented to annul the restriction.

§ 34. A very remarkable alteration that had been silently wrought in the course of the executive government gave rise to the fourth of the remedial articles in the act of settlement. According to the original constitution of our monarchy, the king had his privy council, composed of the great officers of state, and of such others as he should summon to it, bound by an oath of fidelity and secrecy; by whom all affairs of weight, whether as to domestic or exterior policy, were debated, for the most part in his presence, and determined, subordinately of course to his pleasure, by the vote of the major part. It could not happen but that some councilors more eminent than the rest should form juntos or cabals, for more close and private management, or be selected as more confidential advisers of their sovereign; and the very name of a cabinet council, as distinguished from the larger body, may be found as far back as the reign of Charles I. But the resolutions of the crown, whether as to foreign alliances or the issuing of proclamations and orders at home, or any other overt act of government, were not finally taken without the deliberation and assent of that body whom the law recognized as its sworn and notorious councilors. This was first broken in upon after the Restoration, and especially after the fall of Clarendon — a strenuous assertor of the rights and dignity of the privy council. "The king," as he complains, "had in his nature so little reverence and esteem for antiquity, and did in truth so much contemn old orders, forms, and institutions, that the objection of novelty rather advanced than obstructed any proposition." He wanted to be absolute on the French plan, for which both he and his brother, as the same historian tells us, had a great predilection, rather than obtain a power little less arbitrary, so far at least as private rights were concerned, on the system of his three predecessors. The delays and the decencies of a regular council, the continual hesitation of lawyers, were not suited to his temper, his talents, or his designs. And it must indeed be admitted that the privy council, even as it was then constituted, was too numerous for the practical administration of supreme power. Thus by degrees it became usual for the ministry or cabinet to obtain the king's final approbation of their measures, before they were laid, for a merely formal ratification, before the council. It was one object of

sir William Temple's short-lived scheme in 1679 to bring back the ancient course, the king pledging himself, on the formation of his new privy council, to act in all things by its advice.

During the reign of William this distinction of the cabinet from the privy council, and the exclusion of the latter from all business of state, became more fully established. This, however, produced a serious consequence as to the responsibility of the advisers of the crown; and at the very time when the controlling and chastising power of parliament was most effectually recognized, it was silently eluded by the concealment in which the objects of its inquiry could wrap themselves. Thus, in the instance of a treaty which the house of commons might deem mischievous and dishonorable, the chancellor setting the great seal to it would of course be responsible; but it is not so evident that the first lord of the treasury, or others more immediately advising the crown on the course of foreign policy, could be liable to impeachment, with any prospect of success, for an act in which their participation could not be legally proved. I do not mean that evidence may not possibly be obtained which would affect the leaders of the cabinet, as in the instances of Oxford and Bolingbroke; but that, the cabinet itself having no legal existence, and its members being surely not amenable to punishment in their simple capacity of privy councilors, which they generally share, in modern times, with a great number even of their adversaries, there is no tangible character to which responsibility is attached; nothing, except a signature or the setting of a seal, from which a bad minister need entertain any further apprehension than that of losing his post and reputation.

William III., from the reservedness of his disposition, as well as from the great superiority of his capacity for affairs to any of our former kings, was far less guided by any responsible councilors than the spirit of our constitution requires. In the business of the partition treaty, which, whether rightly or otherwise, the house of commons reckoned highly injurious to the public interest, he had not even consulted his cabinet; nor could any minister, except the earl of Portland and lord Somers, be proved to have had a concern in the transaction; for, though the house impeached lord Orford and lord Halifax, they were not in fact any further parties to it than by being in the secret, and the former had shown his usual intractability by objecting to the whole measure. This was undoubtedly such a departure from sound constitutional usage as left parliament no control over the executive admin-

istration. It was endeavored to restore the ancient principle by this provision in the act of settlement, that, after the accession of the house of Hanover, all resolutions as to government should be debated in the privy council, and signed by those present. But, whether it were that real objections were found to stand in the way of this article or that ministers shrank back from so definite a responsibility, they procured its repeal a very few years afterward. The plans of government are discussed and determined in a cabinet council, forming indeed part of the larger body, but unknown to the law by any distinct character or special appointment. I conceive, though I have not the means of tracing the matter clearly, that this change has prodigiously augmented the direct authority of the secretaries of state, especially as to the interior department, who communicate the king's pleasure in the first instance to subordinate officers and magistrates, in cases which, down at least to the time of Charles I., would have been determined in council. But proclamations and orders still emanate, as the law requires, from the privy council; and on some rare occasions, even of late years, matters of domestic policy have been referred to their advice. It is generally understood, however, that no councilor is to attend, except when summoned;[10] so that, unnecessarily numerous as the council has become, these special meetings consist only of a few persons besides the actual ministers of the cabinet, and give the latter no apprehension of a formidable resistance. Yet there can be no reasonable doubt that every councilor is as much answerable for the measures adopted by his consent, and especially when ratified by his signature, as those who bear the name of ministers, and who have generally determined upon them before he is summoned.

The experience of William's partiality to Bentinck and Keppel, in the latter instance not very consistent with the good sense and dignity of his character, led to a strong measure of precaution against the probable influence of foreigners under the new dynasty; the exclusion of all persons not born within the dominions of the British crown from every office of civil and military trust, and from both houses of parliament. No other country, as far as I recollect, has adopted so sweeping a disqualification; and it must, I think, be admitted that it goes a greater length than liberal policy

[10] This is the modern usage, but of its origin I can not speak. On one remarkable occasion, while Anne was at the point of death, the dukes of Somerset and Argyle went down to the council-chamber without summons to take their seats; but it seems to have been intended as an unexpected manœuvre of policy.

can be said to warrant. But the narrow prejudices of George I. were well restrained, by this provision, from gratifying his corrupt and servile German favorites with lucrative offices.

§ 35. The next article is of far more importance; and would, had it continued in force, have perpetuated that struggle between the different parts of the legislature, especially the crown and house of commons, which the new limitations of the monarchy were intended to annihilate. The baneful system of rendering the parliament subservient to the administration, either by offices and pensions held at pleasure, or by more clandestine corruption, had not ceased with the house of Stuart. William, not long after his accession, fell into the worst part of this management, which it was most difficult to prevent; and, according to the practice of Charles's reign, induced by secret bribes the leaders of parliamentary opposition to betray their cause on particular questions. The tory patriot, sir Christopher Musgrave, trod in the steps of the whig patriot, sir Thomas Lee. A large expenditure appeared every year, under the head of secret-service money; which was pretty well known, and sometimes proved, to be disposed of, in great part, among the members of both houses.[11] No check was put on the number or quality of placemen in the lower house. New offices were continually created, and at unreasonable salaries. Those who desired to see a regard to virtue and liberty in the parliament of England could not be insensible to the enormous mischief of this influence. But in seeking for a remedy against the peculiar evil of the times, the party in opposition to the court during this reign, whose efforts at reformation were too frequently misdirected either through faction or some sinister regards toward the deposed family, went into the preposterous extremity of banishing all servants of the crown from the house of commons. Whether the bill for free and impartial proceedings in parliament, which was rejected by a very small majority of the house of lords in 1693, and, having in the next session passed through both houses, met with the king's negative, to the great disappointment and displeasure of the commons, was of this general nature, or excluded only certain specified officers of the crown, I am not able to determine; though the prudence and expediency of William's re-

[11] Burnet says, p. 42, that sir John Trevor, a tory, first put the king on this method of corruption. Trevor himself was so venal that he received a present of 1000 guineas from the city of London, being then speaker of the commons, for his service in carrying a bill through the house; and, upon its discovery, was obliged to put the vote that he had been guilty of a high crime and misdemeanor. This resolution being carried, he absented himself from the house, and was expelled.

fusal must depend entirely upon that question. But in the act of settlement the clause is quite without exception; and if it had ever taken effect, no minister could have had a seat in the house of commons, to bring forward, explain, or defend the measures of the executive government. Such a separation and want of intelligence between the crown and parliament must either have destroyed the one or degraded the other. The house of commons would, either in jealousy and passion, have armed the strength of the people to subvert the monarchy, or, losing that effective control over the appointment of ministers which has sometimes gone near to their nomination, would have fallen almost into the condition of those states-general of ancient kingdoms, which have met only to be cajoled into subsidies and give a passive consent to the propositions of the court. It is one of the greatest safeguards of our liberty that eloquent and ambitious men, such as aspire to guide the counsels of the crown, are, from habit and use, so connected with the houses of parliament, and derive from them so much of their renown and influence, that they lie under no temptation, nor could, without insanity, be prevailed upon to diminish the authority and privileges of that assembly. No English statesman, since the Revolution, can be liable to the very slightest suspicion of an aim, or even a wish, to establish absolute monarchy on the ruins of our constitution. Whatever else has been done, or designed to be done amiss, the rights of parliament have been out of danger. They have, whenever a man of powerful mind shall direct the cabinet, and none else can possibly be formidable, the strong security of his own interest, which no such man will desire to build on the caprice and intrigue of a court. And as this immediate connection of the advisers of the crown with the house of commons, so that they are, and ever profess themselves, as truly the servants of one as of the other, is a pledge for their loyalty to the entire legislature as well as to their sovereign (I mean, of course, as to the fundamental principles of our constitution), so has it preserved for the commons their preponderating share in the executive administration, and elevated them in the eyes of foreign nations, till the monarchy itself has fallen comparatively into shade. The pulse of Europe beats according to the tone of our parliament; the counsels of our kings are there revealed, and, by that kind of previous sanction which it has been customary to obtain, become, as it were, the resolutions of a senate; and we enjoy the individual pride and dignity which belong to republicans, with the steadiness and tran-

quillity which the supremacy of a single person has been supposed peculiarly to bestow.

But if the chief ministers of the crown are indispensably to be present in one or other house of parliament, it by no means follows that the doors should be thrown open to all those subaltern retainers, who, too low to have had any participation in the measures of government, come merely to earn their salaries by a sure and silent vote. Unless some limitation could be put on the number of such officers, they might become the majority of every parliament, especially if its duration were indefinite or very long. It was always the popular endeavor of the opposition, or, as it was usually denominated, the country party, to reduce the number of these dependents; and as constantly the whole strength of the court was exerted to keep them up. William, in truth, from his own errors, and from the disadvantage of the times, would not venture to confide in an unbiased parliament. On the formation, however, of a new board of revenue, in 1694, for managing the stamp-duties, its members were incapacitated from sitting in the house of commons. This, I believe, is the first instance of exclusion on account of employment; and a similar act was obtained in 1699, extending this disability to the commissioners and some other officers of excise. But when the absolute exclusion of all civil and military officers by the act of settlement was found, on cool reflection, too impracticable to be maintained, and a revision of that article took place in the year 1706, the house of commons were still determined to preserve at least the principle of limitation as to the number of placemen within their walls. They gave way, indeed, to the other house in a considerable degree, receding, with some unwillingness, from a clause specifying expressly the description of offices which should not create a disqualification, and consenting to an entire repeal of the original article. But they established two provisions of great importance, which still continue the great securities against an overwhelming influence: first, that every member of the house of commons accepting an office under the crown, except a higher commission in the army, shall vacate his seat, and a new writ shall issue; secondly, that no person holding an office created since the 25th of October, 1705, shall be capable of being elected or re-elected at all. They excluded, at the same time, all such as held pensions during the pleasure of the crown; and, to check the multiplication of placemen, enacted that no greater number of commissioners should be appointed to execute any office than had been

employed in its execution at some time before that parliament.

§ 36. It had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretense, who showed any disposition to thwart government in political prosecutions. The general behavior of the bench had covered it with infamy. Though the real security for an honest court of justice must be found in their responsibility to parliament and to public opinion, it was evident that their tenure in office must, in the first place, cease to be precarious, and their integrity rescued from the severe trial of forfeiting the emoluments upon which they subsisted. In the debates previous to the declaration of rights, we find that several speakers insisted on making the judges' commissions *quamdiu se bene gesserint*—that is, during life or good behavior, instead of *durante placito*, at the discretion of the crown. The former, indeed, is said to have been the ancient course till the reign of James I. But this was omitted in the hasty and imperfect bill of rights. The commissions, however, of William's judges ran *quamdiu se bene gesserint.* But the king gave an unfortunate instance of his very injudicious tenacity of bad prerogatives in refusing his assent, in 1692, to a bill that had passed both houses for establishing this independence of the judges by law, and confirming their salaries. We owe this important provision to the act of settlement; not, as ignorance and adulation have perpetually asserted, to his late majesty George III. No judge can be dismissed from office, except in consequence of a conviction for some offense, or the address of both houses of parliament, which is tantamount to an act of the legislature. It is always to be kept in mind that they are still accessible to the hope of further promotion, to the zeal of political attachment, to the flattery of princes and ministers; that the bias of their prejudices, as elderly and peaceable men, will, in a plurality of cases, be on the side of power; that they have very frequently been trained, as advocates, to vindicate every proceeding of the crown: from all which we should look on them with some little vigilance, and not come hastily to a conclusion that, because their commissions can not be vacated by the crown's authority, they are wholly out of the reach of its influence. I would by no means be misinterpreted, as if the general conduct of our courts of justice since the Revolution, and especially in later times, which in most respects have been the best times, were not deserving of that credit it has usually gained; but possibly it may

have been more guided and kept straight than some are willing to acknowledge by the spirit of observation and censure which modifies and controls our whole government.

The last clause in the act of settlement, that a pardon under the great seal shall not be pleadable in bar of an impeachment, requires no particular notice beyond what has been said on the subject in a former chapter.

§ 37. In the following session, a new parliament having been assembled, in which the tory faction had less influence than in the last, and Louis XIV. having in the mean time acknowledged the son of James as king of England, the natural resentment of this insult and breach of faith was shown in a more decided assertion of Revolution principles than had hitherto been made. The pretended king was attainted of high treason; a measure absurd as a law, but politic as a denunciation of perpetual enmity. It was made high treason to correspond with him, or remit money for his service; and a still more vigorous measure was adopted—an oath to be taken, not only by all civil officers, but by all ecclesiastics, members of the universities, and school-masters, acknowledging William as lawful and rightful king, and denying any right or title in the pretended prince of Wales. The tories, and especially lord Nottingham, had earnestly contended, in the beginning of the king's reign, against those words in the act of recognition which asserted William and Mary to be rightfully and lawfully king and queen. They opposed the association at the time of the assassination-plot, on account of the same epithets, taking a distinction which satisfied the narrow understanding of Nottingham, and served as a subterfuge for more cunning men, between a king whom they were bound in all cases to obey and one whom they could style rightful and lawful. These expressions were in fact slightly modified on that occasion; yet fifteen peers and ninety-two commoners declined, at least for a time, to sign it. The present oath of abjuration, therefore, was a signal victory of the whigs, who boasted of the Revolution, over the tories, who excused it. The renunciation of the hereditary right—for at this time few of the latter party believed in the young man's spuriousness—was complete and unequivocal. The dominant faction might enjoy, perhaps, a charitable pleasure in exposing many of their adversaries, and especially the high-church clergy, to the disgrace and remorse of perjury. Few or none, however, who had taken the oath of allegiance refused this additional cup of bitterness, though so much less defensible, according to the principles they had employed to vindicate

their compliance in the former instance; so true it is that in matters of conscience the first scruple is the only one which it costs much to overcome. But the imposition of this test, as was evident in a few years, did not check the boldness or diminish the numbers of the Jacobites; and I must confess that, of all sophistry that weakens moral obligation, that is the most pardonable which men employ to escape from this species of tyranny. The state may reasonably make an entire and heartfelt attachment to its authority the condition of civil trust; but nothing more than a promise of peaceable obedience can justly be exacted from those who ask only to obey in peace. There was a bad spirit abroad in the church, ambitious, factious, intolerant, calumnious; but this was not necessarily partaken by all its members, and many excellent men might deem themselves hardly dealt with in requiring their denial of an abstract proposition, which did not appear so totally false according to their notions of the English constitution and the church's doctrine.

NOTES TO CHAPTER XV.

I. BILL OF RIGHTS.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND SETTLING THE SUCCESSION OF THE CROWN (1689).

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did, upon the 13th day of February, in the year of our Lord 1688, present unto their majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said Lords and Commons, in the words following; viz.:

Whereas the late king James II., by the assistance of divers evil counselors, judges, and ministers employed by him, did endeavor to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom:

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes.

4. By levying money for and to the use of the Crown, by pretense of prerogative, for other time, and in other manner, than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers, contrary to law.

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the Court of King's Bench for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9. And whereas of late years partial, corrupt, and unqualified persons have been returned and served on juries in

trials, and particularly divers jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefits of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late king James II. having abdicated the government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal, and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them as were of right to be sent to parliament, to meet and sit at Westminster upon the 22d day of January, in this year 1688, in order to such an establishment as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representation of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare:

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the Crown by pretense and prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are protestants may have arms for their defense suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliament ought to be held frequently.

And they do claim, demand, and insist, upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example:

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein:

Having therefore an entire confidence that his said highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and

Mary, prince and princess of Orange, be, and be declared, king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in and executed by the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue, to the princess Anne of Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said prince and princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to their majesties king William and queen Mary: so help me God.

I, A. B., do swear that I do from my heart abhor, detest, and abjure as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, preeminence, or authority, ecclesiastical or spiritual, within this realm: so help me God.

IV. Upon which their said majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration.

V. And thereupon their majesties were pleased that the said Lords Spiritual and Temporal, and Commons, being the two houses of parliament, should continue to sit, and with their majesties' royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

VI. Now, in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvelous providence and merciful goodness to this nation, to provide and preserve their said majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto Him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts, think, and do hereby recognize, acknowledge, and declare that, king James II. having abdicated the government, and their majesties having accepted the crown and royal dignity as aforesaid, their said majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, king and queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown and dignity of the said realms, with all honors, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this na-

tion doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their majesties that it may be enacted, established, and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said majesties, and the survivor of them, during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in and executed by his majesty, in the names of both their majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her majesty; and for default of such issue, to her royal highness the princess Anne of Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of his said majesty: And thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities forever; and do faithfully promise that they will stand to, maintain, and defend their said majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt any thing to the contrary.

IX. And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist; the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded, and be forever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being protestants, as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion, or profession, or marrying as aforesaid, were naturally dead.

X. And that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall, on the first day of the meeting of the first parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the declaration mentioned in the statute made in the 13th year of the reign of king Charles II., intituled "An Act for the more effectual preserving the king's person and government, by disabling Papists from sitting in either House of Parliament." But if it shall happen that such king or queen, upon his or her succession to the crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, on the first day of meeting of the first parliament as aforesaid, which shall first happen, after such king or queen shall have attained the said age of twelve years.

XI. All which their majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm forever; and the same are, by their said majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in parliament assembled, and by the authority of the same, declared, enacted, or established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, that from and after this present session of parliament no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon granted before the 23d day of October, in the year of our Lord 1689, shall

be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other than as if this act had never been made.

II. HISTORY OF THE LAW ON TREASON.

In the earlier ages of our law the crime of high treason appears to have been of a vague and indefinite nature, determined only by such arbitrary construction as the circumstances of each particular case might suggest. It was held treason to kill the king's father or his uncle; and Mortimer was attainted for accroaching, as it was called, royal power; that is, for keeping the administration in his own hands, though without violence toward the reigning prince. But no people can enjoy a free constitution unless an adequate security is furnished by their laws against this discretion of judges in a matter so closely connected with the mutual relation between the government and its subjects. A petition was accordingly presented to Edward III. by one of the best parliaments that ever sat, requesting that, "whereas the king's justices in different counties adjudge men indicted before them to be traitors for divers matters not known by the commons to be treasonable, the king would, by his council, and the nobles and learned men (les grands et sages) of the land, declare in parliament what should be held for treason." The answer to this petition is in the words of the existing statute, which, as it is by no means so prolix as it is important, I shall place before the reader's eyes.

"Whereas divers opinions have been before this time in what case treason shall be said, and in what not; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth: that is to say, when a man doth compass or imagine the death of our lord the king, of my lady his queen, or of their eldest son and heir; or if a man do violate the king's companion or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be provably attainted of open deed by people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lusheburg, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceipt of our said lord the king and of his people; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their place doing their offices; and it is to be understood that, in the cases above rehearsed, it ought to be judged treason which extends to our lord the king and his royal majesty. And of such treason the forfeiture of the escheats pertaineth to our lord the king, as well of the lands and tenements holden of others as of himself."

It seems impossible not to observe that the want of distinct arrangement, natural to so unphilosophical an age, and which renders many of our old statutes very confused, is eminently displayed in this strange conjunction of offenses—where to counterfeit the king's seal, which might be for the sake of private fraud, and even his coin, which must be so, is ranged along with all that really endangers the established government, with conspiracy and insurrection. But this is an objection of little magnitude compared with one that arises out of an omission in enumerating the modes whereby treason could be committed. In most other offenses the intention, however manifest, the contrivance, however deliberate, the attempt, however casually rendered abortive, form so many degrees of maliguity, or at least of mischief, which the jurisprudence of most countries, and none more, at least formerly, than England, has been accustomed to distinguish from the perpetrated action by awarding an inferior punishment, or even none at all. Nor is this distinction merely founded on a difference in the moral indignation with which we are impelled to regard an inchoated and a consummate crime, but is warranted by a principle of reason, since the penalties attached to the completed offense spread their terror over all the machinations preparatory to it; and he who fails in his stroke has had the murderer's fate as much before his eyes as the more dexterous assassin. But those who conspire against the constituted government connect in their sanguine hope the assurance of impunity with the execution of their crime, and would justly deride the mockery of an accusation which could only be preferred against them when their banners were unfurled and their force arrayed. It is as reasonable, therefore, as it is conformable to the usages of every country, to place conspiracies against the

sovereign power upon the footing of actual rebellion, and to crush those by the penalties of treason who, were the law to wait for their opportunity, might silence or pervert the law itself. Yet in this famous statute we find it only declared treasonable to compass or imagine the king's death; while no project of rebellion appears to fall within the letter of its enactments unless it ripen into a substantive act of levying war.

We may be, perhaps, less inclined to attribute this material omission to the laxity which has been already remarked to be usual in our older laws, than to apprehensions entertained by the barons that, if a mere design to levy war should be rendered treasonable, they might be exposed to much false testimony and arbitrary construction. But strained constructions of this very statute, if such were their aim, they did not prevent. Without adverting to the more extravagant convictions under this statute in some violent reigns, it gradually became an established doctrine with lawyers that a conspiracy to levy war against the king's person, though not in itself a distinct treason, may be given in evidence as an overt act of compassing his death. Great as the authorities may be on which this depends, and reasonable as it surely is that such offenses should be brought within the pale of high treason, yet it is almost necessary to confess that this doctrine appears utterly irreconcilable with any fair interpretation of the statute. It has, indeed, by some been chiefly confined to cases where the attempt meditated is directly against the king's person for the purpose of deposing him, or of compelling him, while under actual duress, to a change of measures; and this was construed into a compassing of his death, since any such violence must endanger his life, and because, as has been said, the prisons and graves of princes are not very distant. But it seems not very reasonable to found a capital conviction on such a sententious remark; nor is it by any means true that a design against a king's life is necessarily to be inferred from the attempt to get possession of his person. So far indeed is this from being a general rule, that in a multitude of instances, especially during the minority or imbecility of a king, the purposes of conspirators would be wholly defeated by the death of the sovereign whose name they designed to employ. But there is still less pretext for applying the same construction to schemes of insurrection when the royal person is not directly the object of attack, and where no circumstance indicates any hostile intention toward his safety. This ample extension of so penal a statute was first given, if I am not mistaken, by the judges in 1663, on occasion of a meeting by some persons at Farley Wood in Yorkshire, in order to concert measures for a rising. But it was afterward confirmed in Harding's case, immediately after the Revolution, and has been repeatedly laid down from the bench in subsequent proceedings for treason, as well as in treatises of very great authority. It has, therefore, all the weight of established precedent; yet I question whether another instance can be found in our jurisprudence of giving so large a construction, not only to a penal, but to any other statute. Nor does it speak in favor of this construction, that temporary laws have been enacted on various occasions to render a conspiracy to levy war treasonable; for which purpose, according to this current doctrine, the statute of Edward III. needed no supplemental provision. Such acts were passed under Elizabeth, Charles II., and George III., each of them limited to the existing reign. But it is very seldom that, in an hereditary monarchy, the reigning prince ought to be secured by any peculiar provisions; and though the remarkable circumstances of Elizabeth's situation exposed her government to unusual perils, there seems an air of adulation or absurdity in the two latter instances. Finally, the act of 57 G. III., c. 6, has confirmed, if not extended, what stood on rather a precarious basis, and rendered perpetual that of 36 G. III., c. 7, which enacts, "that if any person or persons whatsoever, during the life of the king, and until the end of the next session of parliament after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same our sovereign lord the king, his heirs and successors, or to deprive or depose him or them from the style, honor, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against his majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both houses or either house of parliament, or to move or stir any foreigner or stranger with force to invade this realm or any other his majesty's dominions or countries under the obeisance

of his majesty, his heirs and successors; and such compassings, imaginations, inventions, devices, and intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being legally convicted thereof upon the oaths of two lawful and credible witnesses, shall be adjudged a traitor, and suffer as in cases of high treason."

This from henceforth will become our standard of law in cases of treason, instead of the statute of Edward III., the latterly received interpretations of which it sanctions and embodies. But it is to be noted, as the doctrine of our most approved authorities, that a conspiracy for many purposes which, if carried into effect, would incur the guilt of treason, will not of itself amount to it. The constructive interpretation of compassing the king's death appears only applicable to conspiracies whereof the intent is to depose or to use personal compulsion toward him, or to usurp the administration of his government. But though insurrections in order to throw down all inclosures, to alter the established law or change religion, or in general for the reformation of alleged grievances of a public nature, wherein the insurgents have no special interests, are in themselves treasonable, yet the previous concert and conspiracy for such purpose could, under the statute of Edward III., only pass for a misdemeanor. Hence, while it has been positively laid down that an attempt by intimidation and violence to force the repeal of a law is high treason, though directed rather against the two houses of parliament than the king's person, the judges did not venture to declare that a mere conspiracy and consultation to raise a force for that purpose would amount to that offense. But the statutes of 36 and 57 Geo. III. determine the intention to levy war, in order to put any force upon or to intimidate either house of parliament, manifested by any overt act, to be treason, and so far have undoubtedly extended the scope of the law. We may hope that so ample a legislative declaration on the law of treason will put an end to the preposterous interpretations which have found too much countenance on some not very distant occasions. The crime of compassing and imagining the king's death must be manifested by some overt act; that is, there must be something done in execution of a traitorous purpose. For, as no hatred toward the person of the sovereign, nor any longings for his death, are the imagination which the law here intends, it seems to follow that loose words or writings, in which such hostile feelings may be embodied, unconnected with any positive design, can not amount to treason. It is now, therefore, generally agreed that no words will constitute that offense, unless as evidence of some overt act of treason; and the same appears clearly to be the case with respect at least to unpublished writings.

The second clause of the statute, or that which declares the levying of war against the king within the realm to be treason, has given rise, in some instances, to constructions hardly less strained than those upon compassing his death. It would, indeed, be a very narrow interpretation, as little required by the letter as warranted by the reason of this law, to limit the expression of levying war to rebellions whereof the deposition of the sovereign, or subversion of his government, should be the deliberate object. Force, unlawfully directed against the supreme authority, constitutes this offense; nor could it have been admitted as an excuse for the wild attempt of the earl of Essex, on this charge of levying war, that his aim was not to injure the queen's person, but to drive his adversaries from her presence. The only questions as to this kind of treason are: first, what shall be understood by force? and secondly, where it shall be construed to be directed against the government? And the solution of both these upon consistent principles, must so much depend on the circumstances which vary the character of almost every case, that it seems natural to distrust the general maxims that have been delivered by lawyers. Many decisions in cases of treason before the Revolution were made by men so servile and corrupt, they violate so grossly all natural right and all reasonable interpretation of law, that it has generally been accounted among the most important benefits of that event to have restored a purer administration of criminal justice. But, though the memory of those who pronounced these decisions is stigmatized, their authority, so far from being abrogated, has influenced later and better men; and it is rather an unfortunate circumstance that precedents which, from the character of the times when they occurred, would lose at present all respect, having been transfused into text-books, and formed perhaps the sole basis of subsequent decisions, are still in not a few points the invisible foundation of our law. No lawyer, I conceive, prosecuting for high treason in this age, would rely on the case of

the duke of Norfolk under Elizabeth, or that of Williams under James I., or that of Benstead under Charles I.; but he would certainly not fail to dwell on the authorities of sir Edward Coke and sir Matthew Hale. Yet these eminent men, and especially the latter, aware that our law is mainly built on adjudged precedent, and not daring to reject that which they would not have themselves asserted, will be found to have rather timidly exercised their judgment in the construction of this statute, yielding a deference to former authority which we have transferred to their own.

These observations are particularly applicable to that class of cases so repugnant to the general understanding of mankind, and, I believe, of most lawyers, wherein trifling insurrections for the purpose of destroying brothels or meeting-houses have been held treasonable under the clause of levying war. Nor does there seem any ground for the defense which has been made for this construction, by taking a distinction that, although arising to effect a partial end by force is only a riot, yet, where a general purpose of the kind is in view, it becomes rebellion; and thus, though to pull down the inclosures in a single manor be not treason against the king, yet to destroy all inclosures throughout the kingdom would be an infringement of his sovereign power. For, however solid this distinction may be, yet, in the class of cases to which I allude, this general purpose was neither attempted to be made out in evidence, nor rendered probable by the circumstances; nor was the distinction ever taken upon the several trials. A few apprentices rose in London in the reign of Charles II., and destroyed some brothels. A mob of watermen and others, at the time of Sacheverell's impeachment, set on fire several dissenting meeting-houses. Every thing like a formal attack on the established government is so much excluded in these instances by the very nature of the offense and the means of the offenders, that it is impossible to withhold our reprobation from the original decision, upon which, with too much respect for unreasonable and unjust authority, the later cases have been established. These, indeed, still continue to be cited as law; but it is much to be doubted whether a conviction for treason will ever again be obtained, or even sought for, under similar circumstances. One reason, indeed, for this, were there no weight in any other, might suffice: the punishment of tumultuous risings, attended with violence, has been rendered capital by the riot act of George I. and other statutes; so that, in the present state of the law, it is generally more advantageous for the government to treat such an offense as felony than as treason.

It might for a moment be doubted, upon the statute of Edward VI., whether the two witnesses whom the act requires must not depose to the same overt acts of treason. But, as this would give an undue security to conspirators, so it is not necessarily implied by the expression; nor would it be, indeed, the most unwarrantable latitude that has been given to this branch of penal law to maintain that two witnesses to any distinct acts comprised in the same indictment would satisfy the letter of this enactment. But a more wholesome distinction appears to have been taken before the Revolution, and is established by the statute of William, that, although different overt acts may be proved by two witnesses, they must relate to the same species of treason, so that one witness to an alleged act of compassing the king's death can not be conjoined with another deposing to an act of levying war, in order to make up the required number. As for the practice of courts of justice before the Restoration, it was so much at variance with all principles, that few prisoners were allowed the benefit of this statute; succeeding judges fortunately deviated more from their predecessors in the method of conducting trials than they have thought themselves at liberty to do in laying down rules of law.

Nothing had brought so much disgrace on the councils of government and on the administration of justice, nothing had more forcibly spoken the necessity of a great change, than the prosecutions for treason during the latter years of Charles II., and in truth during the whole course of our legal history. The statutes of Edward III. and Edward VI., almost set aside by sophistical constructions, required the corroboration of some more explicit law; and some peculiar securities were demanded for innocence against that conspiracy of the court with the prosecutor which is so much to be dreaded in all trials for political crimes. Hence the attainders of Russell, Sidney, Cornish, and Armstrong were reversed by the convention parliament without opposition; and men attached to liberty and justice, whether of the whig or tory name, were anxious to prevent any future recurrence of those iniquitous proceedings, by which the popular frenzy at one time, the wickedness of the court at another, and in each instance with the co-operation of a servile bench of judges, had sullied the honor of English

justice. A better tone of political sentiment had begun, indeed, to prevail, and the spirit of the people must ever be a more effectual security than the virtue of the judges; yet, even after the Revolution, if no unjust or illegal convictions in cases of treason can be imputed to our tribunals, there was still not a little of that rudeness toward the prisoner, and manifestation of a desire to interpret all things to his prejudice, which had been more grossly displayed by the bench under Charles II. The Jacobites, against whom the law now directed its terrors, as loudly complained of Treby and Pollexfen, as the whigs had of Scroggs and Jefferies, and weighed the convictions of Ashton and Anderton against those of Russell and Sidney.

Ashton was a gentleman who, in company with lord Preston, was seized in endeavoring to go over to France with an invitation from the Jacobite party. The contemporary writers on that side, and some historians who incline to it, have represented his conviction as grounded upon insufficient, because only upon presumptive, evidence. It is true that, in most of our earlier cases of treason, treasonable facts have been directly proved; whereas it was left to the jury in that of Ashton, whether they were satisfied of his acquaintance with the contents of certain papers taken on his person. There does not, however, seem to be any reason why presumptive inferences are to be rejected in charges of treason, or why they should be drawn with more hesitation than in other grave offenses; and if this be admitted, there can be no doubt that the evidence against Ashton was such as is ordinarily reckoned conclusive. It is stronger than that offered for the prosecution against O'Quigley at Maidstone, in 1798, a case of the closest resemblance; and yet I am not aware that the verdict in that instance was thought open to censure. No judge, however, in modern times, would question, much less reply to, the prisoner as to material points of his defense, as Holt and Pollexfen did in this trial; the practice of a neighboring kingdom, which, in our more advanced sense of equity and candor, we are agreed to condemn.

It is perhaps less easy to justify the conduct of chief-justice Treby in the trial of Anderton for printing a treasonable pamphlet. The testimony came very short of satisfactory proof, according to the established rules of English law, though by no means such as men in general would slight. It chiefly consisted of a comparison between the characters of a printed work found concealed in his lodgings and certain types belonging to his press: a comparison manifestly less admissable than that of handwriting, which is always rejected, and indeed totally inconsistent with the rigor of English proof. Besides the common objections made to a comparison of hands, and which apply more forcibly to printed characters, it is manifest that types cast in the same font must always be exactly similar. But, on the other hand, it seems unreasonable absolutely to exclude, as our courts have done, the comparison of handwriting as inadmissible evidence: a rule which is every day eluded by fresh rules, not much more rational in themselves, which have been invented to get rid of its inconvenience.* There seems, however, much danger in the construction which draws printed libels, unconnected with any conspiracy, within the pale of treason, and especially the treason of compassing the king's death, unless where they directly tended to his assassination. No later authority can, as far as I remember, be adduced for the prosecution of any libel as treasonable under the statute of Edward III. But the pamphlet for which Anderton was convicted was certainly full of the most audacious Jacobitism, and might perhaps fall, by no unfair construction, within the charge of adhering to the king's enemies; since no one could be more so than James, whose design of invading the realm had been frequently avowed by himself.

* Comparison of handwriting is now admitted by the Courts of Law.

CHAPTER XVI.

ON THE STATE OF THE CONSTITUTION IN THE REIGNS OF ANNE, GEORGE I., AND GEORGE II.

§ 1. Termination of Contest between the Crown and Parliament. § 2. Distinctive Principles of Whigs and Tories. § 3. Changes effected in these by Circumstances. § 4. Impeachment of Sacheverell displays them again. § 5. Revolutions in the Ministry under Anne. § 6. War of the Succession. § 7. Treaty of Peace broken off. Renewed again by the Tory Government. § 8. Arguments for and against the Treaty of Utrecht. § 9. The Negotiation mismanaged. § 10. Intrigues of the Jacobites. § 11. Some of the Ministers engage in them. § 12. Just Alarm for the Hanover Succession. § 13. Accession of George I. Whigs come into Power. § 14. Great Disaffection in the Kingdom. § 15. Impeachment of Tory Ministers. § 16. Bill for Septennial Parliaments. § 17. Peerage Bill. § 18. Jacobitism among the Clergy. § 19. Convocation. § 20. Its Encroachments. § 21. Hoadley. Convocation no longer suffered to sit. § 22. Infringements of the Toleration by Statutes under Anne. § 23. They are repealed by the Whigs. § 24. Principles of Toleration fully established. § 25. Banishment of Atterbury. § 26. Decline of the Jacobites. § 27. Prejudices against the Reigning Family. Jealousy of the Crown. § 28. Changes in the Constitution whereon it was founded. Permanent Military Force. Apprehensions from it. Establishment of Militia. § 29. Influence over Parliament by Places and Pensions. Attempts to restrain it. Place Bill of 1743. Secret Corruption. § 30. Commitments for Breach of Privilege. § 31. Extension of Penal Laws. § 32. Diminution of personal Authority of the Crown. Causes of this. § 33. Party Connections. § 34. Influence of Political Writings. § 35. Publication of Debates. § 36. Increased Influence of the Middle Ranks.

§ 1. THE act of settlement was the seal of our constitutional laws, the complement of the Revolution itself and the bill of rights, the last great statute which restrains the power of the crown, and manifests, in any conspicuous degree, a jealousy of parliament in behalf of its own and the subject's privileges. The battle had been fought and gained; the statute-book, as it becomes more voluminous, is less interesting in the history of our constitution; the voice of petition, complaint, or remonstrance is seldom to be traced in the Journals; the crown, in return, desists altogether, not merely from the threatening or objurgatory tone of the Stuarts, but from that dissatisfaction sometimes apparent in the language of William; and the vessel seems riding in smooth water, moved by other impulses, and liable, perhaps, to other dangers, than those of the ocean-wave and the tempest. The reigns, accordingly, of Anne, George I., and George II., afford rather materials for dissertation than consecutive facts for such a work as the present, and may be sketched in a single chapter, though by no means the less important, which the reader's study and reflection must enable him to fill up.

Changes of an essential nature were in operation during the sixty years of these three reigns, as well as in that beyond the limits of this undertaking, which in length measures them all; some of them greatly enhancing the authority of the crown, or rather of the executive government, while others had so opposite a tendency, that philosophical speculators have not been uniform in determining on which side was the sway of the balance.

§ 2. No clear understanding can be acquired of the political history of England without distinguishing, with some accuracy of definition, the two great parties of whig and tory. But this is not easy; because those denominations being sometimes applied to factions in the state, intent on their own aggrandizement, sometimes to the principles they entertained or professed, have become equivocal, and do by no means, at all periods and on all occasions, present the same sense; an ambiguity which has been increased by the lax and incorrect use of familiar language. We may consider the words, in the first instance, as expressive of a political theory or principle, applicable to the English government. They were originally employed at the time of the bill of exclusion, though the distinction of the parties they denote is evidently at least as old as the long parliament. Both of these parties, it is material to observe, agreed in the maintenance of the constitution; that is, in the administration of government by an hereditary sovereign, and in the concurrence of that sovereign with the two houses of parliament in legislation, as well as in those other institutions which have been reckoned most ancient and fundamental. A favorer of unlimited monarchy was not a tory, neither was a republican a whig. Lord Clarendon was a tory, Hobbes was not; bishop Hoadley was a whig, Milton was not. But they differed mainly in this: that to a tory the constitution, inasmuch as it was the constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. Within those bounds which he, as well as his antagonist, meant not to transgress, and rejecting all unnecessary innovation, the whig had a natural tendency to political improvement, the tory an aversion to it. The one loved to descant on liberty and the rights of mankind, the other on the mischiefs of sedition and the rights of kings. Though both, as I have said, admitted a common principle, the maintenance

of the constitution, yet this made the privileges of the subject, that the crown's prerogative, his peculiar care. Hence it seemed likely that, through passion and circumstance, the tory might aid in establishing despotism, or the whig in subverting monarchy. The former was generally hostile to the liberty of the press, and to freedom of inquiry, especially in religion; the latter their friend. The principle of the one, in short, was amelioration; of the other, conservation.

§ 3. But the distinctive characters of whig and tory were less plainly seen, after the Revolution and act of settlement, in relation to the crown, than to some other parts of our polity. The tory was ardently, and in the first place, the supporter of the church in as much pre-eminence and power as he could give it. For the church's sake, when both seemed as it were on one plank, he sacrificed his loyalty; for her he was always ready to persecute the catholic, and if the times permitted not to persecute, yet to restrain and discountenance the non-conformist. He came unwillingly into the toleration which the whig held up as one of the great trophies of the Revolution. The whig spurned at the haughty language of the church, and treated the dissenters with moderation, or perhaps with favor. This distinction subsisted long after the two parties had shifted their ground as to civil liberty and royal power. Again, a predilection for the territorial aristocracy, and for a government chiefly conducted by their influence, a jealousy of new men, of the mercantile interest, of the commonalty, never failed to mark the genuine tory. It has been common to speak of the whigs as an aristocratical faction. Doubtless the majority of the peerage from the Revolution downward to the death of George II. were of that denomination. But this is merely an instance wherein the party and the principle are to be distinguished. The natural bias of the aristocracy is toward the crown; but, except in most part of the reign of Anne, the crown might be reckoned with the whig party. No one who reflects on the motives which are likely to influence the judgment of classes in society would hesitate to predict that an English house of lords would contain a larger proportion of men inclined to the tory principle than of the opposite school; and we do not find that experience contradicts this anticipation.

It will be obvious that I have given to each of these political principles a moral character, and have considered them as they would subsist in upright and conscientious men, not, as we may find them "in the dregs of Romulus," suffocated

by selfishness or distorted by faction. The whigs appear to have taken a far more comprehensive view of the nature and ends of civil society; their principle is more virtuous, more flexible to the variations of time and circumstance, more congenial to large and masculine intellects. But it may probably be no small advantage that the two parties, or rather the sentiments which have been presumed to actuate them, should have been mingled, as we find them, in the complex mass of the English nation, whether the proportions may or not have been always such as we might desire. They bear some analogy to the two forces which retain the planetary bodies in their orbits; the annihilation of one would disperse them into chaos, that of the other would drag them to a centre. And though I can not reckon these old appellations by any means characteristic of our political factions in the nineteenth century, the names whig and tory are often well applied to individuals. Nor can it be otherwise; since they are founded not only on our laws and history, with which most have some acquaintance, but in the diversities of condition and of moral temperament generally subsisting among mankind.

It is, however, one thing to prefer the whig principle, another to justify, as an advocate, the party which bore that name. So far as they were guided by that principle, I hold them far more friendly to the great interests of the commonwealth than their adversaries. But, in truth, the peculiar circumstances of these four reigns after the Revolution, the spirit of faction, prejudice, and animosity; above all, the desire of obtaining or retaining power, which, if it be ever sought as a means, is soon converted into an end, threw both parties very often into a false position, and gave to each the language and sentiments of the other; so that the two principles are rather to be traced in writings, and those not wholly of a temporary nature, than in the debates of parliament. In the reigns of William and Anne, the whigs, speaking of them generally as a great party, had preserved their original character unimpaired far more than their opponents. All that had passed in the former reign served to humble the tories, and to enfeeble their principle. The Revolution itself, and the votes upon which it was founded; the bill of recognition in 1690; the repeal of the non-resisting test; the act of settlement; the oath of abjuration, were solemn adjudications, as it were, against their creed. They took away the old argument, that the letter of the law was on their side. If this, indeed, were all usurpation, the answer was

ready; but those who did not care to make it, or by their submission put it out of their power, were compelled to sacrifice not a little of that which had entered into the definition of a tory. Yet even this had not a greater effect than that systematic jealousy and dislike of the administration, which made them encroach, according to ancient notions, and certainly their own, on the prerogative of William. They learned in this no unpleasing lesson to popular assemblies, to magnify their own privileges and the rights of the people. This tone was often assumed by the friends of the exiled family, and in them it was without any dereliction of their object. It was natural that a Jacobite should use popular topics in order to thwart and subvert a usurping government. His faith was to the crown, but to the crown on a right head. In a tory who voluntarily submitted to the reigning prince, such an opposition to the prerogative was repugnant to the maxims of his creed, and placed him, as I have said, in a false position. This is of course applicable to the reigns of George I. and II., and in a greater degree in proportion as the tory and Jacobite were more separated than they had been, perhaps, under William.

The tories gave a striking proof how far they might be brought to abandon their theories, in supporting an address to the queen that she would invite the princess Sophia to take up her residence in England—a measure so unnatural as well as imprudent, that some have ascribed it to a subtlety of politics which I do not comprehend. But we need not, perhaps, look further than to the blind rage of a party just discarded, who, out of pique toward their sovereign, made her more irreconcilably their enemy, and, while they hoped to brand their opponents with inconsistency, forgot that the imputation would rebound with tenfold force on themselves. The whigs justly resisted a proposal so little called for at that time; but it led to an act for the security of the succession, designating a regency in the event of the queen's decease, and providing that the actual parliament, or the last, if none were in being, should meet immediately, and continue for six months, unless dissolved by the successor.

In the conduct of this party, generally speaking, we do not, I think, find any abandonment of the cause of liberty. The whigs appear to have been zealous for bills excluding placemen from the house, or limiting their numbers in it; and the abolition of the Scots privy council, an odious and despotic tribunal, was owing in a great measure to the authority of lord Somers. In these measures, however, the to-

ries generally co-operated; and it is certainly difficult in the history of any nation to separate the influence of sincere patriotism from that of animosity and thirst of power. But one memorable event in the reign of Anne gave an opportunity for bringing the two theories of government into collision, to the signal advantage of that which the whigs professed: I mean the impeachment of Dr. Sacheverell. Though, with a view to the interests of their ministry, this prosecution was very unadvised, and has been deservedly censured, it was of high importance in a constitutional light, and is not only the most authentic exposition, but the most authoritative ratification, of the principles upon which the Revolution is to be defended.

§ 4. The charge against Sacheverell was not for impugning what was done at the Revolution, which he affected to vindicate, but for maintaining that it was not a case of resistance to the supreme power, and consequently no exception to his tenet of an unlimited passive obedience. The managers of the impeachment had, therefore, not only to prove that there was resistance in the Revolution, which could not, of course, be sincerely disputed, but to assert the lawfulness, in great emergencies, or what is called in politics necessity, of taking arms against the law—a delicate matter to treat of at any time, and not least so by ministers of state and law officers of the crown, in the very presence, as they knew, of their sovereign. We can not praise too highly their speeches upon this charge: some shades, rather of discretion than discordance, may be perceptible; and we may distinguish the warmth of Lechmere, or the openness of Stanhope, from the caution of Walpole, who betrays more anxiety than his colleagues to give no offense in the highest quarter; but in every one the same fundamental principles of the whig creed, except on which, indeed, the impeachment could not rest, are unambiguously proclaimed:

"Since we must give up our right to the laws and liberties of this kingdom," says Sir Joseph Jekyll, "or, which is all one, be precarious in the enjoyment of them, and hold them only during pleasure, if this doctrine of unlimited non-resistance prevails, the commons have been content to undertake this prosecution."—"The doctrine of unlimited, unconditional passive obedience," says Mr. Walpole, "was first invented to support arbitrary and despotic power, and was never promoted or countenanced by any government that had not designs, some time or other, of making use of it." And thus General Stanhope still more vigorously: "As to the doctrine itself of absolute non-resistance, it should seem needless to prove by arguments that it is inconsistent with the law of reason, with the law of nature, and with the practice of all ages and countries. Nor is it very material what the opinions of

some particular divines, or even the doctrine generally preached in some particular reigns, may have been concerning it. It is sufficient for us to know what the practice of the church of England has been when it found itself oppressed. And, indeed, one may appeal to the practice of all churches, of all states, and of all nations in the world, how they behaved themselves when they found their civil and religious constitutions invaded and oppressed by tyranny. I believe we may further venture to say that there is not at this day subsisting any nation or government in the world whose first original did not receive its foundation either from resistance or compact; and as to our purpose, it is equal if the latter be admitted; for wherever compact is admitted, there must be admitted likewise a right to defend the rights accruing by such compact. To argue the municipal laws of a country in this case is idle. Those laws were only made for the common course of things, and can never be understood to have been designed to defeat the end of all laws whatsoever, which would be the consequence of a nation's tamely submitting to a violation of all their divine and human rights." Mr. Lechmere argues to the same purpose in yet stronger terms.

But, if these managers for the commons were explicit in their assertion of the whig principle, the counsel for Sacheverell by no means unfurled the opposite banner with equal courage. In this was chiefly manifested the success of the former. His advocates had recourse to the petty chicane of arguing that he had laid down a general rule of obedience without mentioning its exceptions, that the Revolution was a case of necessity, and that they fully approved what was done therein. They set up a distinction, which, though at that time perhaps novel, has sometimes since been adopted by tory writers—that resistance to the supreme power was indeed utterly illegal on any pretense whatever, but that the supreme power in this kingdom was the legislature, not the king; and that the Revolution took effect by the concurrence of the lords and commons. This is of itself a descent from the high ground of toryism, and would not have been held by the sincere bigots of that creed. Though specious, however, the argument is a sophism, and does not meet the case of the Revolution. For, though the supreme power may be said to reside in the legislature, yet the prerogative within its due limits is just as much part of the constitution, and the question of resistance to lawful authority remains as before. Even if this resistance had been made by the two houses of parliament, it was but the case of the civil war which had been explicitly condemned by more than one statute of Charles II. But, as Mr. Lechmere said in reply, it was undeniable that the lords and commons did not join in that resistance at the revolution as part of the legislative and supreme power, but as part of the collective body of the nation. And sir John Holland had before observed, "that

there was a resistance at the Revolution was most plain, if taking up arms in Yorkshire, Nottinghamshire, Cheshire, and almost all the counties of England; if the desertion of a prince's own troops to an invading prince, and turning their arms against their sovereign, be resistance." It might, in fact, have been asked whether the dukes of Leeds and Shrewsbury, then sitting in judgment on Sacheverell (and who afterward voted him not guilty), might not have been convicted of treason if the prince of Orange had failed of success? The advocates, indeed, of the prisoner made so many concessions as amounted to an abandonment of all the general question. They relied chiefly on numerous passages in the homilies, and most approved writers of the Anglican church, asserting the duty of unbounded passive obedience. But the managers eluded these in their reply with decent respect. The lords voted Sacheverell guilty by a majority of 67 to 59, several voting on each side rather according to their present faction than their own principles. They passed a slight sentence, interdicting him only from preaching for three years. This was deemed a sort of triumph by his adherents; but a severe punishment on one so insignificant would have been misplaced; and the sentence may be compared to the nominal damages sometimes given in a suit instituted for the trial of a great right.

§ 5. The shifting combinations of party in the reign of Anne, which affected the original distinctions of whig and tory, though generally known, must be shortly noticed. The queen, whose understanding and fitness for government were below mediocrity, had been attached to the tories, and bore an antipathy to her predecessor. Her first ministry, her first parliament, gave presage of a government to be wholly conducted by that party. But this prejudice was counteracted by the persuasions of that celebrated favorite, the wife of Marlborough, who, probably from some personal resentments, had thrown her influence into the scale of the whigs. The well-known records of their conversation and correspondence present a strange picture of good-natured feebleness on one side, and of ungrateful insolence on the other. But the interior of a court will rarely endure daylight. Though Godolphin and Marlborough, in whom the queen reposed her entire confidence, had been thought tories, they became gradually alienated from that party, and communicated their own feelings to the queen. The house of commons very reasonably declined to make an hereditary grant to the latter out of the revenues of the post-office in 1702, when he had per-

formed no extraordinary services; though they acceded to it without hesitation after the battle of Blenheim. This gave some offense to Anne; and the chief tory leaders in the cabinet, Rochester, Nottingham, and Buckingham, displaying a reluctance to carry on the war with such vigor as Marlborough knew to be necessary, were soon removed from office. Their revengeful attack on the queen, in the address to invite the princess Sophia, made a return to power hopeless for several years. Anne, however, entertained a desire very natural to an English sovereign, yet in which none but a weak one will expect to succeed, of excluding chiefs of parties from her councils. Disgusted with the tories, she was loath to admit the whigs; and thus Godolphin's administration, from 1704 to 1708, was rather sullenly supported, sometimes indeed thwarted, by that party. Cowper was made chancellor against the queen's wishes; but the junto, as it was called, of five eminent whig peers, Somers, Halifax, Wharton, Oxford, and Sunderland, were kept out through the queen's dislike, and in some measure, no question, through Godolphin's jealousy. They forced themselves into the cabinet about 1708; and effected the dismissal of Harley and St. John, who, though not of the regular tory school in connection or principle, had already gone along with that faction in the late reign, and were now reduced by their dismissal to unite with it. The whig ministry of queen Anne, so often talked of, can not, in fact, be said to have existed more than two years, from 1708 to 1710; her previous administration having been at first tory, and afterward of a motley complexion, though depending for existence on the great whig interest which it in some degree proscribed. Every one knows that this ministry was precipitated from power through the favorite's abuse of her ascendency, become at length intolerable to the most forbearing of queens and mistresses, conspiring with another intrigue of the bed-chamber, and the popular clamor against Sacheverell's impeachment. It seems rather a humiliating proof of the sway which the feeblest prince enjoys even in a limited monarchy, that the fortunes of Europe should have been changed by nothing more noble than the insolence of one waiting-woman and the cunning of another. It is true that this was effected by throwing the weight of the crown into the scale of a powerful faction; yet the house of Bourbon would probably not have reigned beyond the Pyrenees but for Sarah and Abigail at queen Anne's toilet.

§ 6. The object of the war, as it is commonly called, of the Grand Alliance, commenced in 1702, was, as expressed in an

address of the house of commons, for preserving the liberties of Europe and reducing the exorbitant power of France. The occupation of the Spanish dominions by the duke of Anjou, on the authority of the late king's will, was assigned as its justification, together with the acknowledgment of the pretended prince of Wales as successor to his father James. Charles, archduke of Austria, was recognized as king of Spain; and as early as 1705 the restoration of that monarchy to his house is declared in a speech from the throne to be not only safe and advantageous, but glorious to England. Louis XIV. had perhaps at no time much hope of retaining for his grandson the whole inheritance he claimed; and on several occasions made overtures for negotiation, but such as indicated his design of rather sacrificing the detached possessions of Italy and the Netherlands than Spain itself and the Indies. After the battle of Oudenarde, however, and the loss of Lille in the campaign of 1708, the exhausted state of France and discouragement of his court induced him to acquiesce in the cession of the Spanish monarchy as a basis of treaty. In the conferences of the Hague, in 1709, he struggled for a time to preserve Naples and Sicily; but ultimately admitted the terms imposed by the allies, with the exception of the famous thirty-seventh article of the preliminaries, binding him to procure by force or persuasion the resignation of the Spanish crown by his grandson within two months. This proposition he declared to be both dishonorable and impracticable; and, the allies refusing to give way, the negotiation was broken off. It was renewed the next year at Gertruydenburg; but the same obstacle still proved insurmountable.

It has been the prevailing opinion in modern times that the English ministry, rather against the judgment of their allies of Holland, insisted upon a condition not indispensable to their security, and too ignominious for their fallen enemy to accept. Some may perhaps incline to think that, even had Philip of Anjou been suffered to reign in Naples, a possession rather honorable than important, the balance of power would not have been seriously affected, and the probability of durable peace been increased. This, however, it was not necessary to discuss. The main question is as to the power which the allies possessed of securing the Spanish monarchy for the archduke, if they had consented to waive the thirty-seventh article of the preliminaries. If, indeed, they could have been considered as a single potentate, it was doubtless possible, by means of keeping up great armies on the frontier, and by the delivery of cautionary towns, to prevent the king

of France from lending assistance to his grandson. But, self-interested and disunited as confederacies generally are, and as the grand alliance had long since become, this appeared a very dangerous course of policy, if Louis should be playing an underhand game against his engagements. And this it was not then unreasonable to suspect, even if we should believe, in despite of some plausible authorities, that he was really sincere in abandoning so favorite an interest. The obstinate adherence of Godolphin and Somers to the preliminaries may possibly have been erroneous; but it by no means deserves the reproach that has been unfairly bestowed on it; nor can the whigs be justly charged with protracting the war to enrich Marlborough, or to secure themselves in power.

§ 7. The conferences at Gertruydenburg were broken off in July, 1710, because an absolute security for the evacuation of Spain by Philip appeared to be wanting; and within six months a fresh negotiation was secretly on foot, the basis of which was his retention of that kingdom. For the administration presided over by Godolphin had fallen meanwhile; new councilors, a new parliament, new principles of government. The tories had from the beginning come very reluctantly into the schemes of the grand alliance; though no opposition to the war had ever been shown in parliament, it was very soon perceived that the majority of that denomination had their hearts bent on peace. But instead of renewing the negotiation in concert with the allies (which indeed might have been impracticable), the new ministers fell upon the course of a clandestine arrangement, in exclusion of all the other powers, which led to the signature of preliminaries in September, 1711, and afterward to the public congress of Utrecht, and the celebrated treaty named from that town. Its chief provisions are too well known to be repeated.

§ 8. The arguments in favor of a treaty of pacification, which should abandon the great point of contest, and leave Philip in possession of Spain and America, were neither few nor inconsiderable. 1. The kingdom had been impoverished by twenty years of uninterruptedly augmented taxation; the annual burdens being triple in amount of those paid before the Revolution. Yet amidst these sacrifices we had the mortification of finding a debt rapidly increasing, whereof the mere interest far exceeded the ancient revenues of the crown, to be bequeathed, like an hereditary curse, to unborn ages.[1] Though the supplies had been raised with less diffi-

[1] The national debt, 31st December, 1714, amounted, according to Chalmers, to £50,644,306. Sinclair makes it £52,145,363. But about half of this was temporary

culty than in the late reign, and the condition of trade was less unsatisfactory, the landed proprietors saw with indignation the silent transfer of their wealth to new men, and almost hated the glory that was brought by their own degradation. Was it not to be feared that they might hate also the Revolution, and the protestant succession that depended on it, when they tasted these fruits it had borne? Even the army had been recruited by violent means unknown to our constitution, yet such as the continual loss of men, with a population at the best stationary, had perhaps rendered necessary.[2]

2. The prospect of reducing Spain to the archduke's obedience was grown unfavorable. It was at best an odious work, and not very defensible on any maxims of national justice, to impose a sovereign on a great people in despite of their own repugnance, and what they deemed their loyal obligation. Heaven itself might shield their righteous cause, and baffle the selfish rapacity of human politics. But what was the state of the war at the close of 1710? The surrender of 7000 English under Stanhope at Brihuega had ruined the affairs of Charles, which in fact had at no time been truly prosperous, and confined him to the single province sincerely attached to him, Catalonia. As it was certain that Philip had spirit enough to continue the war, even if abandoned by his grandfather, and would have the support of almost the entire nation, what remained but to carry on a very doubtful contest for the subjugation of that extensive kingdom? In Flanders, no doubt, the genius of Marlborough kept still the ascendant; yet France had her Fabius in Villars; and the capture of three or four small fortresses in a whole campaign did not presage a rapid destruction of the enemy's power.

3. It was acknowledged that the near connection of the monarchs on the thrones of France and Spain could not be desired for Europe. Yet the experience of ages had shown how little such ties of blood determined the policy of courts; a Bourbon on the throne of Spain could not but assert the honor, and even imbibe the prejudices, of his subjects; and

annuities. The whole expenses of the war are reckoned by the former writer at £65,853,799. The interest of the debt was, as computed by Chalmers, £2,811,903; by Sinclair, £3,351,358.

[2] A bill was passed for raising a sufficient number of troops out of such persons as have no lawful calling or employment.—Stat. 4 Anne, c. 10; Parl. Hist., 335. The parish officers were thus enabled to press men for the land service; a method hardly less unconstitutional than the former, and liable to enormous abuses. The act was temporary, but renewed several times during the war. It was afterward revived in 1757 (30 Geo. II., c. 8), but never, I believe, on any later occasion.

as the two nations were in all things opposite, and must clash in their public interests, there was little reason to fear a subserviency in the cabinet of Madrid, which, even in that absolute monarchy, could not be displayed against the general sentiment.

4. The death of the emperor Joseph, and election of the archduke Charles in his room, which took place in the spring of 1711, changed in no small degree the circumstances of Europe. It was now a struggle to unite the Spanish and Austrian monarchies under one head. Even if England might have little interest to prevent this, could it be indifferent to the smaller states of Europe that a family not less ambitious and encroaching than that of Bourbon should be so enormously aggrandized? France had long been to us the only source of apprehension; but to some states, to Savoy, to Switzerland, to Venice, to the principalities of the Empire, she might justly appear a very necessary bulwark against the aggressions of Austria. The alliance could not be expected to continue faithful and unanimous after so important an alteration in the balance of power.

5. The advocates of peace and adherents of the new ministry stimulated the national passions of England by vehement reproaches of the allies. They had thrown, it was contended, in despite of all treaties, an unreasonable proportion of expense upon a country not directly concerned in their quarrel, and rendered a negligent or criminal administration their dupes or accomplices. We were exhausting our blood and treasure to gain kingdoms for the house of Austria which insulted, and the best towns of Flanders for the States-General who cheated us. The barrier treaty of lord Townshend was so extravagant, that one might wonder at the presumption of Holland in suggesting its articles, much more at the folly of our government in acceding to them. It laid the foundation of endless dissatisfaction on the side of Austria, thus reduced to act as the vassal of a little republic in her own territories, and to keep up fortresses at her own expense which others were to occupy. It might be anticipated that, at some time, a sovereign of that house would be found more sensible to ignominy than to danger, who would remove this badge of humiliation by dismantling the fortifications which were thus to be defended. Whatever exaggeration might be in these clamors, they were sure to pass for undeniable truths with a people jealous of foreigners, and prone to believe itself imposed upon, from a consciousness of general ignorance and credulity.

These arguments were met by answers not less confident, though less successful at the moment, than they have been deemed convincing by the majority of politicians in later ages.

1. It was denied that the resources of the kingdom were so much enfeebled; the supplies were still raised without difficulty; commerce had not declined; public credit stood high under the Godolphin ministry; and it was especially remarkable that the change of administration, notwithstanding the prospect of peace, was attended by a great fall in the price of stocks. France, on the other hand, was notoriously reduced to the utmost distress; and, though it were absurd to allege the misfortunes of our enemy by way of consolation for our own, yet the more exhausted of the two combatants was naturally that which ought to yield; and it was not for the honor of our free government that we should be outdone in magnanimous endurance of privations for the sake of the great interests of ourselves and our posterity by the despotism we so boastfully scorned. The king of France had now for half a century been pursuing a system of encroachment on the neighboring states, which the weakness of the two branches of the Austrian house, and the perfidiousness of the Stuarts, not less than the valor of his troops and skill of his generals, had long rendered successful. The tide had turned for the first time in the present war; victories more splendid than were recorded in modern warfare had illustrated the English name. Were we spontaneously to relinquish these great advantages, and, two years after Louis had himself consented to withdraw his forces from Spain, our own arms having been in the mean time still successful on the most important scene of the contest, to throw up the game in despair, and leave him far more the gainer at the termination of this calamitous war than he had been after those triumphant campaigns which his vaunting medals commemorate? Spain of herself could not resist the confederates, even if united in support of Philip; which was denied as to the provinces composing the kingdom of Aragon, and certainly as to Catalonia: it was in Flanders that Castile was to be conquered; it was France that we were to overcome; and now that her iron barrier had been broken through, when Marlborough was preparing to pour his troops upon the defenseless plains of Picardy, could we doubt that Louis must in good earnest abandon the cause of his grandson, as he had already pledged himself in the conferences of Gertruydenburg?

2. It was easy to slight the influence which the ties of

blood exert over kings. Doubtless they are often torn asunder by ambition or wounded pride. But it does not follow that they have no efficacy; and the practice of courts in cementing alliances by intermarriage seems to show that they are not reckoned indifferent. It might, however, be admitted that a king of Spain, such as she had been a hundred years before, would probably be led by the tendency of his ambition into a course of policy hostile to France. But that monarchy had long been declining: great rather in name and extent of dominion than intrinsic resources, she might perhaps rally for a short period under an enterprising minister; but with such inveterate abuses of government, and so little progressive energy among the people, she must gradually sink lower in the scale of Europe, till it might become the chief pride of her sovereigns that they were the younger branches of the house of Bourbon. To cherish this connection would be the policy of the court of Versailles; there would result from it a dependent relation, an habitual subserviency of the weaker power, a family compact of perpetual union, always opposed to Great Britain. In distant ages, and after fresh combinations of the European commonwealth should have seemed almost to efface the recollection of Louis XIV. and the war of the succession, the Bourbons on the French throne might still claim a sort of primogenitary right to protect the dignity of the junior branch by interference with the affairs of Spain; and a late posterity of those who witnessed the peace of Utrecht might be entangled by its improvident concessions.

3. That the accession of Charles to the empire rendered his possession of the Spanish monarchy in some degree less desirable, need not be disputed; though it would not be easy to prove that it could endanger England, or even the smaller states, since it was agreed on all hands that he was to be master of Milan and Naples. But against this, perhaps imaginary, mischief the opponents of the treaty set the risk of seeing the crowns of France and Spain united on the head of Philip. In the years 1711 and 1712, the dauphin, the duke of Burgundy, and the duke of Berry were swept away. An infant stood alone between the king of Spain and the French succession. The king was induced, with some unwillingness, to sign a renunciation of this contingent inheritance. But it was notoriously the doctrine of the French court that such renunciations were invalid; and the sufferings of Europe were chiefly due to this tenet of indefeasible royalty. It was very possible that Spain would never con-

sent to this union, and that a fresh league of the great powers might be formed to prevent it; but, if we had the means of permanently separating the two kingdoms in our hands, it was strange policy to leave open this door for a renewal of the quarrel.

§ 9. But, whatever judgment we may be disposed to form as to the political necessity of leaving Spain and America in the possession of Philip, it is impossible to justify the course of that negotiation which ended in the peace of Utrecht. It was at best a dangerous and inauspicious concession, demanding every compensation that could be devised, and which the circumstances of the war entitled us to require. France was still our formidable enemy; the ambition of Louis was still to be dreaded, his intrigues to be suspected. That an English minister should have thrown himself into the arms of this enemy at the first overture of negotiation; that he should have renounced advantages upon which he might have insisted; that he should have restored Lille, and almost attempted to procure the sacrifice of Tournay; that throughout the whole correspondence and in all personal interviews with Torcy he should have shown the triumphant queen of Great Britain more eager for peace than her vanquished adversary; that the two courts should have been virtually conspiring against those allies, without whom we had bound ourselves to enter on no treaty; that we should have withdrawn our troops in the midst of a campaign, and even seized upon the towns of our confederates while we left them exposed to be overcome by a superior force; that we should have first deceived those confederates by the most direct falsehood in denying our clandestine treaty, and then dictated to them its acceptance, are facts so disgraceful to Bolingbroke, and in somewhat a less degree to Oxford, that they can hardly be palliated by establishing the expediency of the treaty itself.

§ 10. For several years after the treaty of Ryswick the intrigues of ambitious and discontented statesmen, and of a misled faction, in favor of the exiled family, grew much colder, the old age of James and the infancy of his son being alike incompatible with their success. The Jacobites yielded a sort of provisional allegiance to the daughter of their king, deeming her, as it were, a regent in the heir's minority, and willing to defer the consideration of his claim till he should be competent to make it, or to acquiesce in her continuance upon the throne, if she could be induced to secure his reversion. Meanwhile, under the name of tories and

high-churchmen, they carried on a more dangerous war by sapping the bulwarks of the revolution settlement. The disaffected clergy poured forth sermons and libels to impugn the principles of the whigs or traduce their characters. Twice a year especially, on the 30th of January and 29th of May, they took care that every stroke upon rebellion and usurpation should tell against the expulsion of the Stuarts and the Hanover succession. They inveighed against the dissenters and the toleration. They set up pretenses of loyalty toward the queen, descanting sometimes on her hereditary right, in order to throw a slur on the settlement. They drew a transparent veil over their designs, which might screen them from prosecution, but could not impose, nor was meant to impose, on the reader. Among these the most distinguished was Leslie, author of a periodical sheet called the *Rehearsal*, printed weekly from 1704 to 1708; and as he, though a non-juror and unquestionable Jacobite, held only the same language as Sacheverell, and others who affected obedience to the government, we can not much be deceived in assuming that their views were entirely the same.

§ 11. The court of St. Germain, in the first years of the queen, preserved a secret connection with Godolphin and Marlborough, though justly distrustful of their sincerity; nor is it by any means clear that they made any strong professions. Their evident determination to reduce the power of France, their approximation toward the whigs, the averseness of the duchess to Jacobite principles, taught at length that unfortunate court how little it had to expect from such ancient friends. The Scotch Jacobites, on the other hand, were eager for the young king's immediate restoration; and their assurances finally produced his unsuccessful expedition to the coast in 1708. This alarmed the queen, who at least had no thoughts of giving up any part of her dominions, and probably exasperated the two ministers. Though Godolphin's partiality to the Stuart cause was always suspected, the proofs of his intercourse with their emissaries are not so strong as against Marlborough; who, so late as 1711, declared himself more positively than he seems hitherto to have done in favor of their restoration. But the extreme selfishness and treachery of his character make it difficult to believe that he had any further view than to secure himself in the event of a revolution which he judged probable. His interest, which was always his deity, did not lie in that direction, and his great sagacity must have perceived it.

§ 12. A more promising overture had by this time been

made to the young claimant from an opposite quarter. Mr. Harley, about the end of 1710, sent the abbé Gaultier to marshal Berwick (natural son of James II. by Marlborough's sister), with authority to treat about the restoration; Anne, of course, retaining the crown for her life, and securities being given for the national religion and liberties. The conclusion of peace was a necessary condition. The Jacobites in the English parliament were directed, in consequence, to fall in with the court, which rendered it decidedly superior. Harley promised to send over in the next year a plan for carrying that design into effect. But neither at that time nor during the remainder of the queen's life did this dissembling minister take any further measures, though still in strict connection with that party at home, and with the court of St. Germain. It was necessary, he said, to proceed gently, to make the army their own, and to avoid suspicions which would be fatal. It was manifest that the course of his administration was wholly inconsistent with his professions; the friends of the house of Stuart felt that he betrayed, though he did not delude them; but it was the misfortune of this minister, or rather the just and natural reward of crooked counsels, that those he meant to serve could neither believe in his friendship nor forgive his appearances of enmity. It is doubtless not easy to pronounce on the real intentions of men so destitute of sincerity as Harley and Marlborough; but in believing the former favorable to the protestant succession, which he had so eminently contributed to establish, we accede to the judgment of those contemporaries who were best able to form one, and especially of the very Jacobites with whom he tampered. And this is so powerfully confirmed by most of his public measures, his averseness to the high tories, and their consequent hatred of him, his irreconcilable disagreement with those of his colleagues who looked most to St. Germain, his frequent attempts to renew a connection with the whigs, his contempt of the Jacobite creed of government, and the little prospect he could have had of retaining power on such a revolution, that, so far at least as may be presumed from what has hitherto become public, there seems no reason for counting the earl of Oxford among those from whom the house of Hanover had any enmity to apprehend.

The pretender, meanwhile, had friends in the tory government more sincere, probably, and zealous than Oxford. In the year 1712, lord Bolingbroke, the duke of Buckingham, president of the council, and the duke of Ormond, were en-

gaged in this connection. The last of these being in the command of the army, little glory as that brought him, might become an important auxiliary. Harcourt, the chancellor, though the proofs are not, I believe, so direct, has always been reckoned in the same interest. Several of the leading Scots peers, with little disguise, avowed their adherence to it; especially the duke of Hamilton, who, luckily perhaps for the kingdom, lost his life in a duel at the moment when he was setting out on an embassy to France. The rage expressed by that faction at his death betrays the hopes they had entertained from him. A strong phalanx of tory members, called the October Club, though by no means entirely Jacobite, were chiefly influenced by those who were such. In the new parliament of 1713, the queen's precarious health excited the Stuart partisans to press forward with more zeal. The mask was more than half drawn aside; and, vainly urging the ministry to fulfill their promises while yet in time, they cursed the insidious cunning of Harley and the selfish cowardice of the queen. Upon her they had some years relied. Lady Masham, the bosom favorite, was entirely theirs; and every word, every look of the sovereign, had been anxiously observed, in the hope of some indication that she would take the road which affection and conscience, as they fondly argued, must dictate. But, whatever may have been the sentiments of Anne, her secret was never divulged, nor is there, as I apprehend, however positively the contrary is sometimes asserted, any decisive evidence whence we may infer that she ever intended her brother's restoration. The weakest of mankind have generally an instinct of self-preservation, which leads them right, and perhaps more than stronger minds possess; and Anne could scarcely help perceiving that her own deposition from the throne would be the natural consequence of once admitting the reversionary right of one whose claim was equally good to the possession. The assertors of hereditary descent could acquiesce in her usurpation no longer than they found it necessary for their object: if her life should be protracted to an ordinary duration, it was almost certain that Scotland first, and afterward England, would be wrested from her impotent grasp. Yet, though I believe the queen to have been sensible of this, it is impossible to pronounce with certainty that, either through pique against the house of Hanover, or inability to resist her own counselors, she might not have come into the scheme of altering the succession.

But, if neither the queen nor her lord-treasurer were in-

clined to take that vigorous course which one party demanded, they at least did enough to raise just alarm in the other; and it seems strange to deny that the protestant succession was in danger. As lord Oxford's ascendency diminished, the signs of impending revolution became less equivocal. Adherents of the house of Stuart were placed in civil and military trust; an Irish agent of the pretender was received in the character of envoy from the court of Spain; the most audacious manifestations of disaffection were overlooked. Several even in parliament spoke with contempt and aversion of the house of Hanover. It was surely not unreasonable in the whig party to meet these assaults of the enemy with something beyond the ordinary weapons of an opposition. They affected no apprehensions that it was absurd to entertain. Those of the opposite faction who wished well to the protestant interest, and were called Hanoverian tories, came over to their side, and joined them on motions that the succession was in danger. No one hardly, who either hoped or dreaded the consequences, had any doubts upon this score; and it is only a few moderns who have assumed the privilege of setting aside the persuasion of contemporaries upon a subject which contemporaries were best able to understand. Are we then to censure the whigs for urging on the elector of Hanover, who, by a strange apathy or indifference, seemed negligent of the great prize reserved for him; or is the bold step of demanding a writ of summons for the electoral prince as duke of Cambridge to pass for a factious insult on the queen, because, in her imbecility, she was leaving the crown to be snatched at by the first comer, even if she were not, as they suspected, in some conspiracy to bestow it on a proscribed heir? I am much inclined to believe that the great majority of the nation were in favor of the protestant succession; but if the princes of the house of Brunswick had seemed to retire from the contest, it might have been impracticable to resist a predominant faction in the council and in parliament, especially if the son of James, listening to the remonstrances of his English adherents, could have been induced to renounce a faith which, in the eyes of too many, was the sole pretext for his exclusion, and was at least almost the only one which could have been publicly maintained with much success consistently with the general principles of our constitution.

§ 13. The queen's death, which came at last, perhaps rather more quickly than was anticipated, broke forever the fair prospects of her family. George I., unknown and absent,

was proclaimed without a single murmur, as if the crown had passed in the most regular descent. But this was a momentary calm. The Jacobite party, recovering from the first consternation, availed itself of its usual arms, and of those with which the new king supplied it. Many of the tories who would have acquiesced in the act of settlement seem to have looked on a leading share in the administration as belonging of right to what was called the church party, and complained of the formation of a ministry on the whig principle. In later times, also, it has been not uncommon to censure George I. for governing, as it is called, by a faction. Nothing can be more unreasonable than this reproach. Was he to select those as his advisers who had been, as we know and as he believed, in a conspiracy with his competitor? Was lord Oxford, even if the king thought him faithful, capable of uniting with any public men, hated as he was on each side? Were not the tories as truly a faction as their adversaries, and as intolerant during their own power? Was there not, above all, a danger that, if some of one denomination were drawn by pique and disappointment into the ranks of the jacobites, the whigs, on the other hand, so ungratefully and perfidiously recompensed for their arduous services to the house of Hanover, might think all royalty irreconcilable with the principles of freedom, and raise up a republican party, of which the scattered elements were sufficiently discernible in the nation?[3] The exclusion, indeed, of the whigs would have been so monstrous, both in honor and policy, that the censure has generally fallen on their alleged monopoly of public offices. But the mischiefs of a disunited, hybrid ministry had been sufficiently manifest in the two last reigns; nor could George, a stranger to his people and their constitution, have undertaken without ruin that most difficult task of balancing parties and persons, to which the great mind of William had proved unequal. Nor is it true that the tories, as such, were proscribed; those who chose to serve the court met with court favor: and in the very outset the few men of sufficient eminence who had testified their attachment to the succession received equitable rewards; but, most happily for himself and the kingdom, most reasonably according to the principles on which alone his throne could rest, the first prince of the house of Brunswick gave a decisive

[3] Though no republican party, as I have elsewhere observed (see p. 536), could with any propriety be said to exist, it is easy to perceive that a certain degree of provocation from the crown might have brought one together in no slight force. These two propositions are perfectly compatible.

preponderance in his favor to Walpole and Townshend above Harcourt and Bolingbroke.

§ 14. The strong symptoms of disaffection which broke out in a few months after the king's accession, and which can be ascribed to no grievance, unless the formation of a whig ministry was to be termed one, prove the taint of the late times to have been deep-seated and extensive. The clergy, in many instances, perverted, by political sermons, their influence over the people, who, while they trusted that from those fountains they could draw the living waters of truth, became the dupes of factious lies and sophistry. Thus encouraged, the heir of the Stuarts landed in Scotland; and the spirit of that people being in a great measure Jacobite, and very generally averse to the union, he met with such success as, had their independence subsisted, would probably have established him on the throne. But Scotland was now doomed to wait on the fortunes of her more powerful ally; and, on his invasion of England, the noisy partisans of hereditary right discredited their faction by its cowardice. Few rose in arms to support the rebellion, compared with those who desired its success, and did not blush to see the gallant savages of the Highlands shed their blood that a supine herd of priests and country gentlemen might enjoy the victory. The severity of the new government after the rebellion has been often blamed; but I know not whether, according to the usual rules of policy, it can be proved that the execution of two peers and thirty other persons, taken with arms in flagrant rebellion, was an unwarrantable excess of punishment. There seems a latent insinuation in those who have argued on the other side, as if the Jacobite rebellion, being founded on an opinion of right, was more excusable than an ordinary treason — a proposition which it would not have been quite safe for the reigning dynasty to acknowledge. Clemency, however, is the standing policy of constitutional governments, as severity is of despotism; and if the ministers of George I. might have extended it to part of the inferior sufferers (for surely those of higher rank were the first to be selected) with safety to their master, they would have done well in sparing him the odium that attends all political punishments.

§ 15. It will be admitted on all hands, at the present day, that the charge of high treason in the impeachments against Oxford and Bolingbroke was an intemperate excess of resentment at their scandalous dereliction of the public honor and interest. The danger of a sanguinary revenge inflamed

by party spirit is so tremendous that the worst of men ought perhaps to escape rather than suffer by a retrospective, or, what is no better, a constructive extension of the law. The particular charge of treason was, that in the negotiation for peace they had endeavored to procure the city of Tournay for the king of France, which was maintained to be an adhering to the queen's enemies within the statute of Edward III. But as this construction could hardly be brought within the spirit of that law, and the motive was certainly not treasonable or rebellious, it would have been incomparably more constitutional to treat so gross a breach of duty as a misdemeanor of the highest kind. This angry temper of the commons led ultimately to the abandonment of the whole impeachment against lord Oxford; the upper house, though it had committed Oxford to the Tower, which seemed to prejudge the question as to the treasonable character of the imputed offense, having two years afterward resolved that the charge of treason should be first determined, before they would enter on the articles of less importance; a decision with which the commons were so ill satisfied, that they declined to go forward with the prosecution. The resolution of the peers was hardly conformable to precedent, to analogy, or to the dignity of the house of commons, nor will it, perhaps, be deemed binding on any future occasion; but the ministers prudently suffered themselves to be beaten, rather than aggravate the fever of the people by a prosecution so full of delicate and hazardous questions.

One of these questions, and by no means the least important, would doubtless have arisen upon a mode of defense alleged by the earl of Oxford in the house when the articles of impeachment were brought up. "My lords," he said, "if ministers of state, acting by the immediate commands of their sovereign, are afterward to be made accountable for their proceedings, it may, one day or other, be the case of all the members of this august assembly." It was, indeed, undeniable that the queen had been very desirous of peace, and a party, as it were, to all the counsels that tended to it. Though it was made a charge against the impeached lords that the instructions to sign the secret preliminaries of 1711 with M. Mesnager, the French envoy, were not under the great seal, nor countersigned by any minister, they were certainly under the queen's signet, and had all the authority of her personal command. This must have brought on the yet unsettled and very delicate question of ministerial responsibility in matters where the sovereign has interposed his own

command; a question better reserved, it might then appear, for the loose generalities of debate than to be determined with the precision of criminal law. Each party, in fact, had in its turn made use of the queen's personal authority as a shield; the whigs availed themselves of it to parry the attack made on their ministry, after its fall, for an alleged mismanagement of the war in Spain before the battle of Almanza; and the modern constitutional theory was by no means so established in public opinion as to bear the rude brunt of a legal argument. Anne herself, like all her predecessors, kept in her own hands the reins of power; jealous, as such feeble characters usually are, of those in whom she was forced to confide (especially after the ungrateful return of the duchess of Marlborough for the most affectionate condescension), and obstinate in her judgment, from the very consciousness of its weakness, she took a share in all business, frequently presided in meetings of the cabinet, and sometimes gave directions without their advice. The defense set up by lord Oxford would undoubtedly not be tolerated at present, if alleged in direct terms, by either house of parliament; however, it may sometimes be deemed a sufficient apology for a minister, by those whose bias is toward a compliance with power, to insinuate that he must either obey against his conscience, or resign against his will.

§ 16. Upon this prevalent disaffection, and the general dangers of the established government, was founded that measure so frequently arraigned in later times, the substitution of septennial for triennial parliaments. The ministry deemed it too perilous for their master, certainly for themselves, to encounter a general election in 1717; but the arguments adduced for the alteration, as it was meant to be permanent, were drawn from its permanent expediency. Nothing can be more extravagant than what is sometimes confidently pretended by the ignorant, that the legislature exceeded its rights by this enactment; or, if that can not legally be advanced, that it at least violated the trust of the people, and broke in upon the ancient constitution. The law for triennial parliaments was of little more than twenty years' continuance. It was an experiment, which, as was argued, had proved unsuccessful; it was subject, like every other law, to be repealed entirely, or to be modified at discretion. As a question of constitutional expediency, the septennial bill was doubtless open at the time to one serious objection. Every one admitted that a parliament subsisting indefinitely during a king's life, but exposed at all times to be dissolved

at his pleasure, would become far too little dependent on the people, and far too much so upon the crown; but if the period of its continuance should thus be extended from three to seven years, the natural course of encroachment, or some momentous circumstances like the present, might lead to fresh prolongations, and gradually to an entire repeal of what had been thought so important a safeguard of its purity. Time has happily put an end to apprehensions which are not on that account to be reckoned unreasonable.

Many attempts have been made to obtain a return to triennial parliaments, the most considerable of which was in 1733, when the powerful talents of Walpole and his opponents were arrayed on this great question. It has been less debated in modern times than some others connected with parliamentary reformation. It may well be doubted whether triennial elections would make much perceptible difference in the course of government, and whether that difference would, on the whole, be beneficial. It will be found, I believe, on a retrospect of the last hundred years, that the house of commons would have acted, in the main, on the same principles had the elections been more frequent; and certainly the effects of a dissolution, when it has occurred in the regular order, have seldom been very important. It is also to be considered whether an assembly which so much takes to itself the character of a deliberative council on all matters of policy ought to follow with the precision of a weather-glass the unstable prejudices of the multitude. There are many who look too exclusively at the functions of parliament as the protector of civil liberty against the crown; functions, it is true, most important, yet not more indispensable than those of steering a firm course in domestic and external affairs, with a circumspectness and providence for the future which no wholly democratical government has ever yet displayed. It is by a middle position between an oligarchical senate and a popular assembly that the house of commons is best preserved both in its dignity and usefulness, subject, indeed, to swerve toward either character by that continual variation of forces which act upon the vast machine of our commonwealth. But what seems more important than the usual term of duration is, that this should be permitted to take its course, except in cases where some great change of national policy may perhaps justify its abridgment. The crown would obtain a very serious advantage over the house of commons if it should become an ordinary thing to dissolve parliament for some petty ministe-

rial interest, or to avert some unpalatable resolution. Custom appears to have established, and with some convenience, the substitution of six for seven years as the natural life of a house of commons. And it may here be permitted to express a hope that the necessary dissolution of parliament within six months of a demise of the crown will not long be thought congenial to the spirit of our modern government.

§ 17. A far more unanimous sentence has been pronounced by posterity upon another great constitutional question that arose under George I. Lord Sunderland persuaded the king to renounce his important prerogative of making peers; and a bill was supported by the ministry, limiting the house of lords, after the creation of a very few more, to its actual numbers. The Scots were to have 25 hereditary, instead of 16 elective, members of the house, a provision neither easily reconciled to the union nor required by the general tenor of the bill. This measure was carried with no difficulty through the upper house, whose interests were so manifestly concerned in it. But a similar motive, concurring with the efforts of a powerful malcontent party, caused its rejection by the commons. It was justly thought a proof of the king's ignorance or indifference in every thing that concerned his English crown, that he should have consented to so momentous a sacrifice, and Sunderland was reproached for so audacious an endeavor to strengthen his private faction at the expense of the fundamental laws of the monarchy. Those who maintained the expediency of limiting the peerage had recourse to uncertain theories as to the ancient constitution, and denied this prerogative to have been originally vested in the crown. A more plausible argument was derived from the abuse, as it was then generally accounted, of creating at once twelve peers in the late reign, for the sole end of establishing a majority for the court, a resource which would be always at the command of successive factions, till the British nobility might become as numerous and venal as that of some European states. It was argued that there was a fallacy in concluding the collective power of the house of lords to be augmented by its limitation, though every single peer would evidently become of more weight in the kingdom; that the wealth of the whole body must bear a less proportion to that of the nation, and would possibly not exceed that of the lower house, while on the other hand it might be indefinitely multiplied by fresh creations; that the crown would lose one great engine of corrupt influence over the commons, which could never be truly independent while its principal

members were looking on it as a stepping-stone to hereditary honors.[4]

Though these reasonings, however, are not destitute of considerable weight, and the unlimited prerogative of augmenting the peerage is liable to such abuses, at least in theory, as might overthrow our form of government, while, in the opinion of some, whether erroneous or not, it has actually been exerted with too little discretion, the arguments against any legal limitation seem more decisive. The crown has been carefully restrained by statutes, and by the responsibility of its advisers; the commons, if they transgress their boundaries, are annihilated by a proclamation; but against the ambition, or, what is much more likely, the perverse haughtiness of the aristocracy, the constitution has not furnished such direct securities. And, as this would be prodigiously enhanced by a consciousness of their power, and by a sense of self-importance which every peer would derive from it after the limitation of their numbers, it might break out in pretensions very galling to the people, and in an oppressive extension of privileges which were already sufficiently obnoxious and arbitrary. It is true that the resource of subduing an aristocratical faction by the creation of new peers could never be constitutionally employed, except in the case of a nearly equal balance; but it might usefully hang over the heads of the whole body, and deter them from any gross excesses of faction or oligarchical spirit. The nature of our government requires a general harmony between the two houses of parliament; and, indeed, any systematic opposition between them would of necessity bring on the subordination of one to the other in too marked a manner; nor had there been wanting, within the memory of man, several instances of such jealous and even hostile sentiments as could only be allayed by the inconvenient remedies of a prorogation or a dissolution. These animosities were likely to revive with more bitterness when the country gentlemen and leaders of the commons should come to look on the nobility as a class into which they could not enter, and the latter should forget more and more, in their inaccessible dignity, the near approach of that gentry to themselves in respectability of birth and extent of possessions.[5]

[4] The arguments on this side are urged by Addison, in the "Old Whig;" and by the author of a tract entitled "Six Questions Stated and Answered."

[5] The speeches of Walpole and others, in the Parliamentary Debates, contain the whole force of the arguments against the peerage bill. Steele, in the "Plebeian," opposed his old friend and coadjutor, Addison, who has been thought by Johnson to have forgotten a little in party and controversy their ancient friendship.

These innovations on the part of the new government were maintained on the score of its unsettled state and want of hold on the national parliament. It may seem a reproach to the house of Hanover that, connected as it ought to have been with the names most dear to English hearts, the protestant religion and civil liberty, it should have been driven to try the resources of tyranny, and to demand more authority, to exercise more control, than had been necessary for the worst of its predecessors. Much of this disaffection was owing to the cold reserve of George I., ignorant of the language, alien from the prejudices of his people, and continually absent in his electoral dominions, to which he seemed to sacrifice the nation's interest and the security of his own crown. It is certain that the acquisition of the duchies of Bremen and Verden for Hanover in 1716[6] exposed Great Britain to a very serious danger, by provoking the king of Sweden to join in a league for the restoration of the pretender. It might have been impossible (such was the precariousness of our revolution settlement) to have made the abdication of the electorate a condition of the house of Brunswick's succession; but the consequences of that connection, though much exaggerated by the factious and disaffected, were in various manners detrimental to English interests during these two reigns; and not the least, in that they estranged the affections of the people from sovereigns whom they regarded as still foreign.

§ 18. The tory and Jacobite factions, as I have observed, were powerful in the church. This had been the case ever since the Revolution. The avowed non-jurors were busy with the press, and poured forth, especially during the encouragement they received in part of Anne's reign, a multitude of pamphlets, sometimes argumentative, more often virulently libelous. Their idle cry that the church was in danger, which both houses in 1704 thought fit to deny by a formal vote, alarmed a senseless multitude. Those who took the oaths were frequently known partisans of the exiled family; and those who affected to disclaim that cause defended the new settlement with such timid or faithless arms as served only to give a triumph to the adversary. About the beginning of William's reign grew up the distinction of high

[6] These duchies had been conquered from Sweden by Denmark, who ceded them to George I., as elector of Hanover, though they had never been resigned by Charles XII. This is not consonant to the usage of nations, and at least was an act of hostility in George I. against a power who had not injured him. Yet Townshend affected to defend it, as beneficial to English interests; though the contrary is most evident, as it provoked Charles to espouse the pretender's cause.

and low churchmen: the first distinguished by great pretensions to sacerdotal power, both spiritual and temporal, by a repugnance to toleration, and by a firm adherence to the tory principle in the state, the latter by the opposite characteristics. These were pitched against each other in the two houses of convocation, an assembly which virtually ceased to exist under George I.

§ 19. The convocation of the province of Canterbury (for that of York seems never to have been important) is summoned by the archbishop's writ, under the king's direction, along with every parliament, to which it bears analogy both in its constituent parts and in its primary functions. It consists (since the Reformation) of the suffragan bishops, forming the upper house; of the deans, archdeacons, a proctor or proxy for each chapter, and two from each diocese, elected by the parochial clergy, who together constitute the lower house. In this assembly subsidies were granted, and ecclesiastical canons enacted. In a few instances under Henry VIII. and Elizabeth, they were consulted as to momentous questions affecting the national religion; the supremacy of the former was approved in 1533, the articles of faith were confirmed in 1562, by the convocation. But their power to enact fresh canons without the king's license was expressly taken away by a statute of Henry VIII.; and, even subject to this condition, is limited by several later acts of parliament (such as the acts of uniformity under Elizabeth and Charles II., that confirming, and therefore rendering unalterable, the thirty-nine articles, those relating to non-residence and other church matters), and still more, perhaps, by the doctrine established in Westminster Hall, that new ecclesiastical canons are not binding on the laity, so greatly that it will ever be impossible to exercise it in any effectual manner. The convocation accordingly, with the exception of that in 1603, when they established some regulations, and that in 1640 (an unfortunate precedent), when they attempted some more, had little business but to grant subsidies, which, however, were from the time of Henry VIII. always confirmed by an act of parliament; an intimation, no doubt, that the legislature did not wholly acquiesce in their power even of binding the clergy in a matter of property. This practice of ecclesiastical taxation was discontinued in 1664, at a time when the authority and pre-eminence of the church stood very high, so that it could not then have seemed the abandonment of an important privilege. From this time the clergy have been taxed at the same rate and in the same manner with the laity.

§ 20. It was the natural consequence of this cessation of all business that the convocation, after a few formalities, either adjourned itself or was prorogued by a royal writ; nor had it ever, with the few exceptions above noticed, sat for more than a few days, till its supply could be voted. But, about the time of the Revolution, the party most adverse to the new order sedulously propagated a doctrine that the convocation ought to be advised with upon all questions affecting the church, and ought even to watch over its interests as the parliament did over those of the kingdom. The commons had so far encouraged this faction as to refer to the convocation the great question of a reform in the liturgy for the sake of comprehension, as has been mentioned in the last chapter, and thus put a stop to the king's design. It was not suffered to sit much during the rest of that reign, to the great discontent of its ambitious leaders. The most celebrated of these, Atterbury, published a book, entitled "the Rights and Privileges of an English Convocation," in answer to one by Wake, afterward archbishop of Canterbury. The speciousness of the former, sprinkled with competent learning on the subject, a graceful style, and an artful employment of topics, might easily delude at least the willing reader. Nothing, indeed, could, on reflection, appear more inconclusive than Atterbury's arguments. Were we even to admit the perfect analogy of a convocation to a parliament, it could not be doubted that the king may, legally speaking, prorogue the latter at his pleasure; and that, if neither money were required to be granted nor laws to be enacted, a session would be very short. The church had by prescription a right to be summoned in convocation; but no prescription could be set up for its longer continuance than the crown thought expedient; and it was too much to expect that William III. was to gratify his half-avowed enemies with a privilege of remonstrance and interposition they had never enjoyed. In the year 1701 the lower house of convocation pretended to a right of adjourning to a different day from that fixed by the upper, and consequently of holding separate sessions. They set up other unprecedented claims to independence, which were checked by a prorogation. Their aim was in all respects to assimilate themselves to the house of commons, and thus both to set up the convocation itself as an assembly collateral to parliament, and in the main independent of it, and to maintain their co-ordinate power and equality in synodical dignity to the prelates' house. The succeeding reign, however, began under tory

auspices, and the convocation was in more activity for some years than at any former period. The lower house of that assembly still distinguished itself by the most factious spirit, and especially by insolence toward the bishops, who passed in general for whigs, and whom, while pretending to assert the divine rights of episcopacy, they labored to deprive of that pre-eminence in the Anglican synod which the ecclesiastical constitution of the kingdom had bestowed on them. None was more prominent in their debates than Atterbury himself, whom, in the zenith of tory influence, at the close of her reign, the queen reluctantly promoted to the see of Rochester.

§ 21. The new government at first permitted the convocation to hold its sittings; but they soon excited a flame which consumed themselves by an attack on Hoadley, bishop of Bangor, who had preached a sermon abounding with those principles concerning religious liberty of which he had long been the courageous and powerful assertor. The lower house of convocation thought fit to denounce, through the report of a committee, the dangerous tenets of this discourse, and of a work not long before published by the bishop. A long and celebrated war of pens instantly commenced, known by the name of the Bangorian controversy, managed, perhaps on both sides, with all the chicanery of polemical writers, and disgusting both from its tediousness and from the manifest unwillingness of the disputants to speak ingenuously what they meant; but as the principles of Hoadley and his advocates appeared in the main little else than those of protestantism and toleration, the sentence of the laity, in the temper that was then gaining ground as to ecclesiastical subjects, was soon pronounced in their favor; and the high-church party discredited themselves by an opposition to what now pass for the incontrovertible truisms of religious liberty. In the ferment of that age, it was expedient for the state to scatter a little dust over the angry insects; the convocation was accordingly prorogued in 1717, and has never again sat for any business.[7] Those who are imbued with high notions of sacerdotal power have sometimes deplored this extinction of the Anglican great council; and though its necessity, as I have already observed, can not possibly be defended as an ancient part of the constitution, there are not wanting specious arguments for the expediency of such a synod. It might be urged that the church, considered only as an integral member of the commonwealth, and the great-

[7] [It has been allowed to sit again in the present reign. ED.]

est corporation within it, might justly claim that right of managing its own affairs which belongs to every other association; that the argument from abuse is not sufficient, and is rejected with indignation when applied, as historically it might be, to representative governments and to civil liberty; that, in the present state of things, no reformation even of secondary importance can be effected without difficulty, nor any looked for in greater matters, both from the indifference of the legislature and the reluctance of the clergy to admit its interposition.

It is answered to these suggestions that we must take experience when we possess it, rather than analogy, for our guide; that ecclesiastical assemblies have in all ages and countries been mischievous, where they have been powerful, which those of our wealthy and numerous clergy must always be; that if, notwithstanding, the convocation could be brought under the management of the state (which by the nature of its component parts might seem not unlikely), it must lead to the promotion of servile men, and the exclusion of merit still more than at present; that the severe remark of Clarendon, who observes that of all mankind none form so bad an estimate of human affairs as churchmen, is abundantly confirmed by experience; that the representation of the church in the house of lords is sufficient for the protection of its interests; that the clergy have an influence which no other corporation enjoys over the bulk of the nation, and may abuse it for the purposes of undue ascendency, unjust restraint, or factious ambition; that the hope of any real good in reformation of the church by its own assemblies, to whatever sort of reform we may look, is utterly chimerical; finally, that as the laws now stand, which few would incline to alter, the ratification of parliament must be indispensable for any material change. It seems to admit of no doubt that these reasonings ought much to outweigh those on the opposite side.

§ 22. In the last four years of the queen's reign some inroads had been made on the toleration granted to dissenters, whom the high-church party held in abhorrence. They had for a long time inveighed against what was called occasional conformity, or the compliance of dissenters with the provisions of the test act in order merely to qualify themselves for holding office or entering into corporations. Nothing could, in the eyes of sensible men, be more advantageous to the church, if a reunion of those who had separated from it were advantageous, than this practice. Admitting even that

the motive was self-interested, has an established government, in church or state, any better ally than the self-interestedness of mankind? Was it not what a presbyterian or independent minister would denounce as a base and worldly sacrifice; and if so, was not the interest of the Anglican clergy exactly in an inverse proportion to this? Any one competent to judge of human affairs would predict, what has turned out to be the case, that, when the barrier was once taken down for the sake of convenience, it would not be raised again for conscience; that the most latitudinarian theory, the most lukewarm dispositions in religion, must be prodigiously favorable to the reigning sect; and that the dissenting clergy, though they might retain, or even extend, their influence over the multitude, would gradually lose it with those classes who could be affected by the test. But even if the tory faction had been cool-headed enough for such reflections, it has unfortunately been sometimes less the aim of the clergy to reconcile those who differ from them than to keep them in a state of dishonor and depression. Hence, in the first parliament of Anne, a bill to prevent occasional conformity more than once passed the commons; and, on its being rejected by the lords, a great majority of William's bishops voting against the measure, an attempt was made to send it up again in a very reprehensible manner, tacked, as it was called, to a grant of money; so that, according to the pretension of the commons in respect to such bills, the upper house must either refuse the supply or consent to what they disapproved. This, however, having miscarried, and the next parliament being of better principles, nothing further was done till 1711, when lord Nottingham, a vehement high-churchman, having united with the whigs against the treaty of peace, they were injudicious enough to gratify him by concurring in a bill to prevent occasional conformity. This was followed up by the ministry in a more decisive attack on the toleration, an act for preventing the growth of schism, which extended and confirmed one of Charles II., enforcing on all school-masters, and even on all teachers in private families, a declaration of conformity to the established church, to be made before the bishop, from whom a license for exercising that profession was also to be obtained. It is impossible to doubt for an instant that, if the queen's life had preserved the tory government for a few years, every vestige of the toleration would have been effaced.

§ 23. These statutes, records of their adversaries' power,

the whigs, now lords of the ascendant, determined to abrogate. The dissenters were unanimously zealous for the house of Hanover and for the ministry; the church of very doubtful loyalty to the crown, and still less affection to the whig name. In the session of 1719, accordingly, the act against occasional conformity, and that restraining education, were repealed.[8] It had been the intention to have also repealed the test act; but the disunion then prevailing among the whigs had caused so formidable an opposition even to the former measures, that it was found necessary to abandon that project. Walpole, more cautious and moderate than the ministry of 1719, perceived the advantage of reconciling the church as far as possible to the royal family and to his own government; and it seems to have been an article in the tacit compromise with the bishops, who were not backward in exerting their influence for the crown, that he should make no attempt to abrogate the laws which gave a monopoly of power to the Anglican communion. We may presume, also, that the prelates undertook not to obstruct the acts of indemnity passed from time to time in favor of those who had not duly qualified themselves for the offices they held; and which, after some time becoming regular, in effect threw open the gates to protestant dissenters, even before the repeal of the test act in 1828.

§ 24. Meanwhile the principles of religious liberty, in all senses of the word, gained strength by this eager controversy, naturally pleasing as they are to the proud independence of the English character, and congenial to those of civil freedom, which both parties, tory as much as whig, had now learned sedulously to maintain. The non-juring and high-church factions among the clergy produced few eminent men; and lost credit, not more by the folly of their notions than by their general want of scholarship and disregard of their duties. The university of Oxford was tainted to the core with Jacobite prejudices; but it must be added that it never stood so low in respectability as a place of education. The government, on the other hand, was studious to promote distinguished men; and doubtless the hierarchy in the first sixty years of the eighteenth century might very advantageously be compared, in point of conspicuous ability, with that of an equal period that ensued. The maxims of persecution were silently abandoned, as well as its practice; Warburton, and others of less name, taught those of toleration with as

[8] The whigs out of power, among whom was Walpole, factiously and inconsistently opposed the repeal of the schism act, so that it passed with much difficulty.

much boldness as Hoadley, but without some of his more invidious tenets; the more popular writers took a liberal tone; the names of Locke and Montesquieu acquired immense authority; the courts of justice discountenanced any endeavor to revive oppressive statutes; and not long after the end of George II.'s reign, it was adjudged in the house of lords, upon the broadest principles of toleration laid down by lord Mansfield, that non-conformity with the established church is recognized by the law, and not an offense at which it connives.

§ 25. Atterbury, bishop of Rochester, the most distinguished of the party denominated high-church, became the victim of his restless character and implacable disaffection to the house of Hanover. The pretended king, for some years after his competitor's accession, had fair hopes from different powers of Europe—France, Sweden, Russia, Spain, Austria (each of whom, in its turn, was ready to make use of this instrument)—and from the powerful faction who panted for his restoration. This was unquestionably very numerous, though we have not as yet the means of fixing with certainty on more than comparatively a small number of names; but a conspiracy for an invasion from Spain and a simultaneous rising was detected in 1722, which implicated three or four peers, and among them the bishop of Rochester. The evidence, however, though tolerably convincing, being insufficient for a verdict at law, it was thought expedient to pass a bill of pains and penalties against this prelate, as well as others against two of his accomplices. The proof, besides many corroborating circumstances, consisted in three letters relative to the conspiracy, supposed to be written by his secretary Kelly, and appearing to be dictated by the bishop. He was deprived of his see, and banished the kingdom for life. This met with strong opposition, not limited to the enemies of the royal family, and is open to the same objection as the attainder of sir John Fenwick—the danger of setting aside those precious securities against a wicked government which the law of treason has furnished. As a vigorous assertion of the state's authority over the church, we may commend the policy of Atterbury's deprivation; but perhaps this was ill purchased by a mischievous precedent. It is, however, the last act of a violent nature in any important matter which can be charged against the English legislature.

§ 26. No extensive conspiracy of the Jacobite faction seems ever to have been in agitation after the fall of Atterbury.

The pretender had his emissaries perpetually alert, and it is understood that an enormous mass of letters from his English friends is in existence;[9] but very few had the courage, or rather folly, to plunge into so desperate a course as rebellion. Walpole's prudent and vigilant administration, without transgressing the boundaries of that free constitution for which alone the house of Brunswick had been preferred, kept in check the disaffected. He wisely sought the friendship of cardinal Fleury, aware that no other power in Europe than France could effectually assist the banished family. After his own fall and the death of Fleury, new combinations of foreign policy arose; his successors returned to the Austrian connection; a war with France broke out; the grandson of James II. became master, for a moment, of Scotland, and even advanced to the centre of this peaceful and unprotected kingdom. But this was hardly more ignominious to the government than to the Jacobites themselves; none of them joined the standard of their pretended sovereign; and the rebellion of 1745 was conclusive, by its own temporary success, against the possibility of his restoration. From this time the government, even when in search of pretexts for alarm, could hardly affect to dread a name grown so contemptible as that of the Stuart party. It survived, however, for the rest of the reign of George II., in those magnanimous compotations which had always been the best evidence of its courage and fidelity.

§ 27. Though the Jacobite party had set before its eyes an object most dangerous to the public tranquillity, it ought to be admitted that they were rendered more numerous and formidable than was necessary by the faults of the reigning kings or of their ministers. They were not latterly actuated, for the most part (perhaps with very few exceptions), by the slavish principles of indefeasible right, much less by those of despotic power. They had been so long in opposition to the court, they had so often spoken the language of liberty, that we may justly believe them to have been its friends. It was the policy of Walpole to keep alive the strongest prejudice in the mind of George II., obstinately retentive of prejudice, as such narrow and passionate minds always are, against the whole body of the tories. They were ill received at court, and generally excluded not only from those depart-

[9] The Stuart Papers obtained from Rome, and now in her majesty's possession, furnish evidence of the Jacobite intrigues, and affect some persons not hitherto suspected. Lord Mahon has communicated some information from these papers in his "History of England."

ments of office which the dominant party have a right to keep in their power, but from the commission of the peace, and every other subordinate trust. This illiberal and selfish course retained many, no doubt, in the pretender's camp, who must have perceived both the improbability of his restoration, and the difficulty of reconciling it with the safety of our constitution. He was, indeed, as well as his son, far less worthy of respect than the contemporary Brunswick kings; without absolutely wanting capacity or courage, he gave the most undeniable evidence of his legitimacy by constantly resisting the counsels of wise men, and yielding to those of priests; while his son, the fugitive of Culloden, despised and deserted by his own party, insulted by the court of France, lost with the advance of years even the respect and compassion which wait on unceasing misfortune, the last sad inheritance of the house of Stuart. But they were little known in England, and from unknown princes men are prone to hope much; if some could anticipate a redress of every evil from Frederick prince of Wales, whom they might discover to be destitute of respectable qualities, it can not be wondered at that others might draw equally flattering prognostics from the accession of Charles Edward. It is almost certain that, if either the claimant or his son had embraced the protestant religion, and had also manifested any superior strength of mind, the German prejudices of the reigning family would have cost them the throne, as they did the people's affections. Jacobitism, in the great majority, was one modification of the spirit of liberty burning strongly in the nation at this period. It gave a rallying-point to that indefinite discontent which is excited by an ill opinion of rulers, and to that disinterested though ignorant patriotism which boils up in youthful minds. The government in possession was hated, not as usurped, but as corrupt; the banished line was demanded, not so much because it was legitimate, but because it was the fancied means of redressing grievances and regenerating the constitution. Such notions were doubtless absurd; but it is undeniable that they were common, and had been so almost from the Revolution. I speak only, it will be observed, of the English Jacobites; in Scotland the sentiments of loyalty and national pride had a vital energy, and the Highland chieftains gave their blood, as freely as their southern allies did their wine, for the cause of their ancient kings.

No one can have looked in the most cursory manner at the political writings of these two reigns, or at the debates of

parliament, without being struck by the continual predictions that our liberties were on the point of extinguishment, or at least by apprehensions of their being endangered. It might seem that little or nothing had been gained by the Revolution, and by the substitution of an elective dynasty. The clamorous invectives of this opposition, combined with the subsequent dereliction of avowed principles by many among them when in power, contributed more than any thing else in our history to cast obloquy and suspicion, or even ridicule, on the name and occupation of patriots. Men of sordid and venal characters always rejoice to generalize so convenient a maxim as the non-existence of public virtue. It may not, however, be improbable, that many of those who took a part in this long contention were less insincere than it has been the fashion to believe, though led too far at the moment by their own passions, as well as by the necessity of coloring highly a picture meant for the multitude, and reduced afterward to the usual compromises and concessions, without which power in this country is ever unattainable. But waiving a topic too generally historical for the present chapter, it will be worth while to consider what sort of ground there might be for some prevalent subjects of declamation; and whether the power of government had not, in several respects, been a good deal enhanced since the beginning of the century. By the power of government I mean not so much the personal authority of the sovereign as that of his ministers, acting perhaps without his directions; which, since the reign of William, is to be distinguished, if we look at it analytically, from the monarchy itself.

§ 28.—I. The most striking acquisition of power by the crown in the new model of government, if I may use such an expression, is the permanence of a regular military force. The reader can not need to be reminded that no army existed before the civil war, that the guards in the reign of Charles II. were about 5000 men, that in the breathing-time between the peace of Ryswick and the war of the Spanish succession the commons could not be brought to keep up more than 7000 troops. Nothing could be more repugnant to the national prejudices than a standing army. The tories, partly from regard to the ancient usage of the constitution, partly, no doubt, from a factious or disaffected spirit, were unanimous in protesting against it. The most disinterested and zealous lovers of liberty came with great suspicion and reluctance into what seemed so perilous an innovation. But the court, after the accession of the house of Hanover, had

many reasons for insisting upon so great an augmentation of its power and security. It is remarkable to perceive by what stealthy advances this came on. Two long wars had rendered the army a profession for men in the higher and middling classes, and familiarized the nation to their dress and rank; it had achieved great honor for itself and the English name; and in the nature of mankind the patriotism of glory is too often an overmatch for that of liberty. The two kings were fond of warlike policy, the second of war itself; their schemes, and those of their ministers, demanded an imposing attitude in negotiation, which an army, it was thought, could best give; the cabinet was for many years entangled in alliances, shifting sometimes rapidly, but in each combination liable to produce the interruption of peace. In the new system which rendered the houses of parliament partakers in the executive administration, they were drawn themselves into the approbation of every successive measure, either on the propositions of ministers, or, as often happens more indirectly, but hardly less effectually, by passing a negative on those of their opponents. The number of troops for which a vote was annually demanded, after some variations, in the first years of George I., was, during the whole administration of Sir Robert Walpole, except when the state of Europe excited some apprehension of disturbance, rather more than 17,000 men, independent of those on the Irish establishment, but including the garrisons of Minorca and Gibraltar. And this continued with little alteration to be our standing army in time of peace during the eighteenth century.

This army was always understood to be kept on foot, as it is still expressed in the preamble of every mutiny bill, for better preserving the balance of power in Europe. The commons would not for an instant admit that it was necessary as a permanent force, in order to maintain the government at home. There can be no question, however, that the court saw its advantage in this light; and I am not perfectly sure that some of the multiplied negotiations on the continent in that age were not intended as a pretext for keeping up the army, or at least as a means of exciting alarm for the security of the established government. In fact, there would have been rebellions in the time of George I., not only in Scotland, which perhaps could not otherwise have been preserved, but in many parts of the kingdom, had the parliament adhered with too pertinacious bigotry to their ancient maxims. Yet these had such influence that it was long before the army was admitted by every one to be perpetual; and

I do not know that it has ever been recognized as such in our statutes. Mr. Pulteney, so late as 1732, a man neither disaffected nor democratical, and whose views extended no further than a change of hands, declared that he "always had been, and always would be, against a standing army of any kind; it was to him a terrible thing, whether under the denomination of parliamentary or any other. A standing army is still a standing army, whatever name it be called by; they are a body of men distinct from the body of the people; they are governed by different laws; blind obedience and an entire submission to the orders of their commanding officer is their only principle. The nations around us are already enslaved, and have been enslaved by those very means; by means of their standing armies they have every one lost their liberties; it is, indeed, impossible that the liberties of the people can be preserved in any country where a numerous standing army is kept up."

This wholesome jealousy, though it did not prevent what was indeed, for many reasons, not to be dispensed with, the establishment of a regular force, kept it within bounds which possibly the administration, if left to itself, would have gladly overleaped. A clause in the mutiny bill, first inserted in 1718, enabling courts-martial to punish mutiny and desertion with death, which had hitherto been only cognizable as capital offenses by the civil magistrate, was carried by a very small majority in both houses. An act was passed in 1735, directing that no troops should come within two miles of any place, except the capital or a garrisoned town, during an election. A more important measure was projected by men of independent principles, at once to secure the kingdom against attack, invaded as it had been by rebels in 1745, and thrown into the most ignominious panic on the rumors of a French armament in 1756, to take away the pretext for a large standing force, and perhaps to furnish a guaranty against any evil purposes to which in future times it might be subservient, by the establishment of a national militia, under the sole authority, indeed, of the crown, but commanded by gentlemen of sufficient estates, and not liable, except in war, to be marched out of its proper county. This favorite plan, with some reluctance on the part of the government, was adopted in 1757.

§ 29.—II. It must be apparent to every one that since the Restoration, and especially since the Revolution, an immense power has been thrown into the scale of both houses of parliament, though practically in more frequent exercise by the

lower, in consequence of their annual session during several months, and of their almost unlimited rights of investigation, discussion, and advice. But if the crown should by any means become secure of an ascendency in this assembly, it is evident that, although the prerogative, technically speaking, might be diminished, the power might be the same, or even possibly more efficacious.

I have mentioned in the last chapter both the provisions inserted in the act of settlement, with the design of excluding altogether the possessors of public office from the house of commons, and the modifications of them by several acts of the queen. These were deemed by the country party so inadequate to restrain the dependents of power from overspreading the benches of the commons, that perpetual attempts were made to carry the exclusive principle to a far greater length. In the next two reigns, if we can trust to the uncontradicted language of debate, or even to the descriptions of individuals in the lists of each parliament, we must conclude that a very undue proportion of dependents on the favor of government were made its censors and counselors. There was still, however, so much left of an independent spirit, that bills for restricting the number of placemen, or excluding pensioners, met always with countenance; they were sometimes rejected by very slight majorities; and, after a time, sir Robert Walpole found it expedient to reserve his opposition for the surer field of the other house.[10] After his fall, it was imputed with some justice to his successors, that they shrunk in power from the bold reformation which they had so frequently endeavored to effect; the king was indignantly averse to all retrenchment of his power, and they wanted probably both the inclination and the influence to cut off all corruption. Yet we owe to this ministry the place bill of 1743, which, derided as it was at the time, seems to have had a considerable effect; excluding a great number of inferior officers from the house of commons, which has never since contained so revolting a list of court deputies as it did in the age of Walpole.

But while this acknowledged influence of lucrative office

[10] By the act of 6 Anne, c. 7, all persons holding pensions from the crown during pleasure were made incapable of sitting in the house of commons; which was extended by 1 Geo. I., c. 56, to those who held them for any term of years. But the difficulty was to ascertain the fact, the government refusing information. Mr. Sandys accordingly proposed a bill in 1730, by which every member of the commons was to take an oath that he did not hold any such pension, and that, in case of accepting one, he would disclose it to the house within fourteen days. This was carried by a small majority through the commons, but rejected in the other house, which happened again in 1734 and in 1740.

might be presumed to operate on many staunch adherents of the actual administration, there was always a strong suspicion, or rather a general certainty, of absolute corruption. The proofs in single instances could never, perhaps, be established; which, of course is not surprising. But no one seriously called in question the reality of a systematic distribution of money by the crown to the representatives of the people. It is true that the appropriation of supplies, and the established course of the exchequer, render the greatest part of the public revenue secure from misapplication; but, under the head of secret-service money, a very large sum was annually expended without account, and some other parts of the civil list were equally free from all public examination. The committee of secrecy appointed after the resignation of sir Robert Walpole endeavored to elicit some distinct evidence of this misapplication; but the obscurity natural to such transactions, and the guilty collusion of subaltern accomplices, which shrouded themselves in the protection of the law, defeated every hope of punishment, or even personal disgrace. This practice of direct bribery continued, beyond doubt, long afterward, and is generally supposed to have ceased about the termination of the American war.

§ 30.—III. The co-operation of both houses of parliament with the executive government enabled the latter to convert to its own purpose, what had often in former times been employed against it, the power of inflicting punishment for breach of privilege. As the subject of parliamentary privilege is of no slight importance, it will be convenient to bring the whole before the reader in a note at the close of this chapter, distinguishing the power, as it relates to offenses committed by members of either house, or against them singly, or the houses of parliament collectively, or against the government and the public.

§ 31.—IV. It is commonly and justly said that civil liberty is not only consistent with, but in its terms implies, the restrictive limitations of natural liberty which are imposed by law. But, as these are not the less real limitations of liberty, it can hardly be maintained that the subject's condition is not impaired by very numerous restraints upon his will, even without reference to their expediency. The price may be well paid, but it is still a price that it costs some sacrifice to pay. Our statutes have been growing in bulk and multiplicity with the regular session of parliament, and with the new system of government; all abounding with prohibitions and penalties, which every man is presumed to know, but

which no man, the judges themselves included, can really know with much exactness. We literary walk amidst the snares and pitfalls of the law. The very doctrine of the more rigid casuists, that men are bound in conscience to observe all the laws of their country, has become impracticable through their complexity and inconvenience; and most of us are content to shift off their penalties in the *mala prohibita* with as little scruple as some feel in risking those of graver offenses. But what more peculiarly belongs to the present subject is the systematic encroachment upon ancient constitutional principles, which has for a long time been made through new enactments, proceeding from the crown, chiefly in respect to the revenue.[11] These may be traced, indeed, in the statute-book, at least as high as the Restoration, and really began in the arbitrary times of revolution which preceded it. They have, however, been gradually extended along with the public burdens, and as the severity of these has prompted fresh artifices of evasion. It would be curious, but not within the scope of this work, to analyze our immense fiscal law, and to trace the history of its innovations. These consist partly in taking away the cognizance of offenses against the revenue from juries, whose partiality in such cases there was in truth much reason to apprehend, and vesting it either in commissioners of the revenue itself or in magistrates; partly in anomalous and somewhat arbitrary powers with regard to the collection; partly in deviations from the established rules of pleading and evidence, by throwing on the accused party in fiscal causes the burden of proving his innocence, or by superseding the necessity of rigorous proof as to matters wherein it is ordinarily required; and partly in shielding the officers of the crown, as far as possible, from their responsibility for illegal actions, by permitting special circumstances of justification to be given in evidence without being pleaded, or by throwing impediments of various kinds in the way of the prosecutor, or by subjecting him to unusual costs in the event of defeat.

These restraints upon personal liberty, and, what is worse, these endeavors, as they seem, to prevent the fair administration of justice between the crown and the subject, have

[11] Among the modern statutes which have strengthened the hands of the executive power, we should mention the riot act, 1 Geo. I., stat. 2, c. 5, whereby all persons tumultuously assembled to the disturbance of the public peace, and not dispersing within one hour after proclamation made by a single magistrate, are made guilty of a capital felony. I am by no means controverting the expediency of this law; but, especially when combined with the prompt aid of a military force, it is surely a compensation for much that may seem to have been thrown into the popular scale.

in general, more especially in modern times, excited little regard as they have passed through the houses of parliament. A sad necessity has overruled the maxims of ancient law; nor is it my business to censure our fiscal code, but to point out that it is to be counted as a set-off against the advantages of the Revolution, and has in fact diminished the freedom and justice which we claim for our polity; and that its provisions have sometimes gone so far as to give alarm to not very susceptible minds, may be shown from a remarkable debate in the year 1737. A bill having been brought in by the ministers to prevent smuggling, which contained some unusual clauses, it was strongly opposed, among other peers, by lord-chancellor Talbot himself, of course in the cabinet, and by lord Hardwicke, then chief-justice, a regularly-bred crown lawyer, and in his whole life disposed to hold very high the authority of government. They objected to a clause subjecting any three persons traveling with arms to the penalty of transportation, on proof by two witnesses that their intention was to assist in the clandestine landing or carrying away prohibited or uncustomed goods. The clause, it was contended, was repugnant to all the maxims of free government. No presumption of a crime could be drawn from the mere wearing of arms; and therefore the admitting of witnesses to prove that any of these men were armed in order to assist in smuggling, would be the admitting of witnesses to prove an intention which was inconsistent with the whole tenor of our laws. They objected to another provision, subjecting a party against whom information should be given that he intended to assist in smuggling, to imprisonment without bail, though the offense itself were in its nature bailable; to another which made informations for assault upon officers of the revenue triable in any county in England; and to a yet more startling protection thrown round the same favored class, that the magistrates should be bound to admit them to bail on charges of killing or wounding any one in the execution of their duty. The bill itself was carried with no great majority; and the provisions subsist at this day, or perhaps have received a further extension.

It will thus appear to every man who takes a comprehensive view of our constitutional history, that the executive government, though shorn of its lustre, has not lost so much of its real efficacy by the consequences of the Revolution as is often supposed—at least that with a regular army to put down insurrection, and an influence sufficient to obtain fresh

statutes of restriction, if such should ever be deemed necessary, it is not exposed, in the ordinary course of affairs, to any serious hazard. But we must here distinguish the executive government, using that word in its largest sense, from the crown itself, or the personal authority of the sovereign: this is a matter of rather delicate inquiry, but too material to be passed by.

§ 32. The real power of the prince, in the most despotic monarchy, must have its limits from nature, and bear some proportion to his courage, his activity, and his intellect. The tyrants of the East become puppets or slaves of their viziers, or it turns to a game of cunning, wherein the winner is he who shall succeed in tying the bowstring round the other's neck. After some ages of feeble monarchs, the titular royalty is found wholly separated from the power of command, and glides on to posterity in its languid channel till some usurper or conqueror stops up the stream forever. In the civilized kingdoms of Europe, those very institutions which secure the permanence of royal families, and afford them a guaranty against manifest subjection to a minister, take generally out of the hands of the sovereign the practical government of his people. Unless his capacities are above the level of ordinary kings, he must repose on the wisdom and diligence of the statesmen he employs, with the sacrifice, perhaps, of his own prepossessions in policy, and against the bent of his personal affections. The power of a king of England is not to be compared with an ideal absoluteness, but with that which could be enjoyed in the actual state of society by the same person in a less bounded monarchy.

The descendants of William the Conqueror on the English throne, down to the end of the seventeenth century, have been a good deal above the average in those qualities which enable, or at least induce, kings to take on themselves a large share of the public administration, as will appear by comparing their line with that of the house of Capet, or perhaps most others during an equal period. Without going further back, we know that Henry VII., Henry VIII., Elizabeth, the four kings of the house of Stuart, though not always with as much ability as diligence, were the master-movers of their own policy, not very susceptible of advice, and always sufficiently acquainted with the details of government to act without it. This was eminently the case also with William III., who was truly his own minister, and much better fitted for that office than those who served him. The king, according to our constitution, is supposed to be present in council, and

was in fact usually, or very frequently, present, so long as the council remained as a deliberative body for matters of domestic and foreign policy; but when a junto or cabinet came to supersede that ancient and responsible body, the king himself ceased to preside, and received their advice separately, according to their respective functions of treasurer, secretary, or chancellor, or that of the whole cabinet through one of its leading members. This change, however, was gradual; for cabinet councils were sometimes held in the presence of William and Anne, to which other councilors, not strictly of that select number, were occasionally summoned.

But on the accession of the house of Hanover this personal superintendence of the sovereign necessarily came to an end. The fact is hardly credible that George I., being incapable of speaking English, as sir Robert Walpole was of conversing in French, the monarch and his minister held discourse with each other in Latin. It is impossible that, with so defective a means of communication (for Walpole, though by no means an illiterate man, can not be supposed to have spoken readily a language very little familiar in this country), George could have obtained much insight into his domestic affairs, or been much acquainted with the characters of his subjects. We know, in truth, that he nearly abandoned the consideration of both, and trusted his ministers with the entire management of this kingdom, content to employ its great name for the promotion of his electoral interests. This continued in a less degree to be the case with his son, who, though better acquainted with the language and circumstances of Great Britain, and more jealous of his prerogative, was conscious of his incapacity to determine on matters of domestic government, and reserved almost his whole attention for the politics of Germany.

§ 33. The broad distinctions of party contributed to weaken the real supremacy of the sovereign. It had been usual before the Revolution, and in the two succeeding reigns, to select ministers individually at discretion; and, though some might hold themselves at liberty to decline office, it was by no means deemed a point of honor and fidelity to do so. Hence men in the possession of high posts had no strong bond of union, and frequently took opposite sides on public measures of no light moment. The queen particularly was always loath to discard a servant on account of his vote in parliament—a conduct generous, perhaps, but feeble, inconvenient, when carried to such excess, in our constitution, and in effect holding out a reward to ingratitude and treachery.

But the whigs having come exclusively into office under the line of Hanover (which, as I have elsewhere observed, was inevitable), formed a sort of phalanx which the crown was not always able to break, and which never could have been broken, but for that internal force of repulsion by which personal cupidity and ambition are ever tending to separate the elements of factions. It became the point of honor among public men to fight uniformly under the same banner, though not, perhaps, for the same cause—if indeed there was any cause really fought for but the advancement of a party. In this preference of certain denominations, or of certain leaders, to the real principles which ought to be the basis of political consistency, there was an evident deviation from the true standard of public virtue; but the ignominy attached to the dereliction of friends for the sake of emolument, though it was every day incurred, must have tended gradually to purify the general character of parliament. Meanwhile the crown lost all that party attachments gained —a truth indisputable on reflection, though, while the crown and the party in power act in the same direction, the relative efficiency of the two forces is not immediately estimated. It was seen, however, very manifestly in the year 1746, when, after long bickering between the Pelhams and lord Granville, the king's favorite minister, the former, in conjunction with a majority of the cabinet, threw up their offices, and compelled the king, after an abortive effort at a new administration, to sacrifice his favorite, and replace those in power whom he could not exclude from it. The same took place in a later period of his reign, when, after many struggles, he submitted to the ascendency of Mr. Pitt.

It seems difficult for any king of England, however conscientiously observant of the lawful rights of his subjects, and of the limitations they impose on his prerogative, to rest always very content with this practical condition of the monarchy. The choice of his councilors, the conduct of government, are intrusted, he will be told, by the constitution to his sole pleasure; yet both as to the one and the other he finds a perpetual disposition to restrain his exercise of power; and though it is easy to demonstrate that the public good is far better promoted by the virtual control of parliament and the nation over the whole executive government than by adhering to the letter of the constitution, it is not to be expected that the argument will be conclusive to a royal understanding. Hence he may be tempted to play rather a petty game, and endeavor to regain, by intrigue

and insincerity, that power of acting by his own will which he thinks unfairly wrested from him. A king of England, in the calculations of politics, is little more than one among the public men of the day—taller indeed, like Saul or Agamemnon, by the head and shoulders, and therefore with no slight advantages in the scramble, but not a match for the many unless he can bring some dexterity to second his strength, and make the best of the self-interest and animosities of those with whom he has to deal; and of this there will generally be so much that in the long run he will be found to succeed in the greater part of his desires: thus George I. and George II., in whom the personal authority seems to have been at the lowest point it has ever reached, drew their ministers, not always willingly, into that course of continental politics which was supposed to serve the purposes of Hanover far better than of England. It is well known that the Walpoles and the Pelhams condemned in private this excessive predilection of their masters for their native country, which alone could endanger their English throne; yet after the two latter brothers had inveighed against lord Granville, and driven him out of power for seconding the king's pertinacity in continuing the war of 1743, they went on themselves in the same track for at least two years, to the imminent hazard of losing forever the Low Countries and Holland, if the French government, so indiscriminately charged with ambition, had not displayed extraordinary moderation at the treaty of Aix-la-Chapelle. The twelve years that ensued gave more abundant proofs of the submissiveness with which the schemes of George II. for the good of Hanover were received by his ministers, though not by his people; but the most striking instance of all is the abandonment by Mr. Pitt himself of all his former professions in pouring troops into Germany. I do not inquire whether a sense of national honor might not render some of these measures justifiable, though none of them were advantageous; but it is certain that the strong bent of the king's partiality forced them on against the repugnance of most statesmen, as well as of the great majority in parliament and out of it.

Comparatively, however, with the state of prerogative before the Revolution, we can hardly dispute that there has been a systematic diminution of the reigning prince's control, which, though it may be compensated or concealed in ordinary times by the general influence of the executive administration, is of material importance in a constitutional

light. Independently of other consequences, which might be pointed out as probable or contingent, it affords a real security against endeavors by the crown to subvert or essentially impair the other parts of our government; for though a king may believe himself and his posterity to be interested in obtaining arbitrary power, it is far less likely that a minister should desire to do so. I mean arbitrary, not in relation to temporary or partial abridgments of the subject's liberty, but to such projects as Charles I. and James II. attempted to execute. What, indeed, might be effected by a king at once able, active, popular, and ambitious, should such ever unfortunately appear in this country, it is not easy to predict; certainly his reign would be dangerous, on one side or other, to the present balance of the constitution. But against this contingent evil, or the far more probable encroachments of ministers, which, though not going the full length of despotic power, might slowly undermine and contract the rights of the people, no positive statutes can be devised so effectual as the vigilance of the people themselves, and their increased means of knowing and estimating the measures of their government.

§ 34. The publication of regular newspapers, not merely designed for the communication of intelligence, but for the discussion of political topics, may be referred to the latter part of the reign of Anne, when they obtained great circulation, and became the accredited organs of different factions.[12] The tory ministers were annoyed at the vivacity of the press, both in periodical and other writings, which led to a stamp duty, intended chiefly to diminish their number, and was nearly producing more pernicious restrictions, such as renewing the licensing act, or compelling authors to acknowledge their names. These, however, did not take place, and the government more honorably coped with their adversaries in the same warfare; nor, with Swift and Bolingbroke on their side, could they require, except, indeed, through the badness of their cause, any aid from the arm of power.[13]

[12] Upon examination of the valuable series of newspapers in the British Museum, I find very little expression of political feelings till 1710, after the trial of Sacheverell, and change of ministry. The *Daily Courant* and *Postman* then begin to attack the Jacobites, and the *Post-boy* the dissenters. But these newspapers were less important than the periodical sheets, such as the *Examiner* and *Medley*, which were solely devoted to party controversy.

[13] Bolingbroke's letter to the *Examiner*, in 1710, excited so much attention that it was answered by lord Cowper, then chancellor, in a letter to the *Tattler*.—Somers Tracts, xiii., 75; where sir Walter Scott justly observes, that the fact of two such statesmen becoming the correspondents of periodical publications shows the influence they must have acquired over the public mind.

In a single hour these two great masters of language were changed from advocates of the crown to tribunes of the people; both more distinguished as writers in this altered scene of their fortunes, and certainly among the first political combatants with the weapons of the press whom the world has ever known. Bolingbroke's influence was of course greater in England; and, with all the signal faults of his public character, with all the factiousness which dictated most of his writings, and the indefinite declamation or shallow reasoning which they frequently display, they have merits not always sufficiently acknowledged. He seems first to have made the tories reject their old tenets of exalted prerogative and hereditary right, and scorn the high-church theories which they had maintained under William and Anne. His "Dissertation on Parties," and "Letters on the History of England," are in fact written on whig principles (if I know what is meant by that name), in their general tendency; however a politician, who had always some particular end in view, may have fallen into several inconsistencies.[14] The same character is due to the "Craftsman," and to most of the temporary pamphlets directed against sir Robert Walpole. They teemed, it is true, with exaggerated declamations on the side of liberty; but that was the side they took; it was to generous prejudices they appealed, nor did they ever advert to the times before the Revolution but with contempt or abhorrence. Libels there were, indeed, of a different class, proceeding from the Jacobite school; but these obtained little regard; the Jacobites themselves, or such as affected to be so, having more frequently espoused that cause from a sense of dissatisfaction with the conduct of the reigning family than from much regard to the pretensions of the other. Upon the whole matter, it must be evident to every person who is at all conversant with the publications of George II.'s reign, with the poems, the novels, the essays, and almost all the literature of the time, that what are called the popular or liberal doctrines of government were decidedly prevalent. The supporters themselves of the Walpole and Pelham administrations, though professedly whigs, and tenacious of Revolution principles, made complaints, both in parliament and in pamphlets, of the democratical spirit, the insubordination to authority, the tendency to republican sentiments, which they alleged to have gained ground among the people. It is cer-

[14] "A king of Great Britain," he says in his seventh Letter on the History of England, "is that supreme magistrate who has a negative voice in the legislature." This was in 1731. Nothing can be more unlike the original tone of toryism.

tain that the tone of popular opinion gave some countenance to these assertions, though much exaggerated, in order to create alarm in the aristocratical classes, and furnish arguments against redress of abuses.

§ 35. The two houses of parliament are supposed to deliberate with closed doors. It is always competent for any one member to insist that strangers be excluded; not on any special ground, but by merely enforcing the standing order for that purpose. It has been several times resolved that it is a high breach of privilege to publish any speeches or proceedings of the commons; though they have since directed their own votes and resolutions to be printed. Many persons have been punished by commitment for this offense; and it is still highly irregular, in any debate, to allude to the reports in newspapers, except for the purpose of animadverting on the breach of privilege. Notwithstanding this pretended strictness, notices of the more interesting discussions were frequently made public; and entire speeches were sometimes circulated by those who had sought popularity in delivering them. After the accession of George I. we find a pretty regular account of debates in an annual publication, "Boyer's Historical Register," which was continued to the year 1737. They were afterward published monthly, and much more at length, in the *London* and the *Gentleman's Magazines;* the latter, as is well known, improved by the pen of Johnson, yet not so as to lose by any means the leading scope of the arguments. It follows, of course, that the restriction upon the presence of strangers had been almost entirely dispensed with. A transparent veil was thrown over this innovation by disguising the names of the speakers, or more commonly by printing only initial and final letters. This ridiculous affectation of concealment was extended to many other words in political writings, and had not wholly ceased in the American war.

It is almost impossible to overrate the value of this regular publication of proceedings in parliament, carried as it has been in our own time to nearly as great copiousness and accuracy as is probably attainable. It tends manifestly and powerfully to keep within bounds the supineness and negligence, the partiality and corruption, to which every parliament, either from the nature of its composition or the frailty of mankind, must more or less be liable. Perhaps the constitution would not have stood so long, or rather would have stood like a useless and untenanted mansion, if this unlawful means had not kept up a perpetual intercourse, a reciproci-

ty of influence, between the parliament and the people. A stream of fresh air, boisterous, perhaps, sometimes as the winds of the north, yet as healthy and invigorating, flows in to renovate the stagnant atmosphere, and to prevent that *malaria* which self-interest and oligarchical exclusiveness are always tending to generate. Nor has its importance been less perceptible in affording the means of vindicating the measures of government, and securing to them, when just and reasonable, the approbation of the majority among the middle ranks, whose weight in the scale has been gradually increasing during the last and present centuries.

§ 36. This augmentation of the democratical influence, using that term as applied to the commercial and industrious classes in contradistinction to the territorial aristocracy, was the slow but certain effect of accumulated wealth and diffused knowledge, acting, however, on the traditional notions of freedom and equality which had ever prevailed in the English people. The nation, exhausted by the long wars of William and Anne, recovered strength in thirty years of peace that ensued; and in that period, especially under the prudent rule of Walpole, the seeds of our commercial greatness were gradually ripened. It was evidently the most prosperous season that England had ever experienced; and the progression, though slow, being uniform, the reign, perhaps, of George II. might not disadvantageously be compared, for the real happiness of the community, with that more brilliant but uncertain and oscillatory condition which has ensued. A distinguished writer has observed that the laborer's wages have never, at least for many ages, commanded so large a portion of subsistence as in this part of the eighteenth century.[15] The public debt, though it excited alarms, from its magnitude, at which we are now accustomed to smile, and though too little care was taken for redeeming it, did not press very heavily on the nation, as the low rate of interest evinces, the government securities at three per cent. having generally stood above par. In the war of 1743, which, from the selfish practice of relying wholly on loans, did not much retard the immediate advance of the country, and still more after the peace of Aix-la-Chapelle, a striking increase of wealth became perceptible. This was shown in one circumstance directly affecting the character of the constitution. The smaller boroughs, which had been from the earliest time under the command of neighboring peers and gentlemen, or sometimes of the crown, were attempted by

[15] Malthus, "Principles of Political Economy" (1820), p. 279.

rich capitalists, with no other connection or recommendation than one which is generally sufficient. The election of strangers by boroughs, and its natural concomitant, bribery, had begun to excite complaint by their increasing frequency, as early as the reign of George I., and led to the act rendering elections void, and inflicting severe penalties for bribery, in 1728. But in the general election of 1747 much more of it took place than ever before. Though the prevalence of bribery is attested by the statute-book and the journals of parliament from the Revolution, it seems not to have broken down all flood-gates till near the end of the reign of George II. But the sale of seats in parliament, like any other transferable property, is never mentioned in any book that I remember to have seen of an earlier date than 1760. We may dispense, therefore, with the inquiry in what manner this extraordinary traffic has affected the constitution, observing only that its influence must have tended to counteract that of the territorial aristocracy, which is still sufficiently predominant. The country gentlemen, who claimed to themselves a character of more independence and patriotism than could be found in any other class, had long endeavored to protect their ascendency by excluding the rest of the community from parliament. This was the principle of the bill which, after being frequently attempted, passed into a law during the tory administration of Anne, requiring every member of the commons, except those for the universities, to possess, as a qualification for his seat, a landed estate, above all incumbrances, of £300 a year.[16] By a later act of George II., with which it was thought expedient by the government of the day to gratify the landed interest, this property must be stated on oath by every member on taking his seat, and, if required, at his election.[17] This law has been repealed in the present reign.

[16] 9 Anne, c. 5.

[17] 33 Geo. II., c. 20.

NOTE TO CHAPTER XVI.

PUNISHMENT FOR BREACH OF PRIVILEGE IN PARLIAMENT.

1. It has been the constant practice of the house of commons to repress disorderly or indecent behavior by a censure delivered through the speaker. Instances of this are even noticed in the Journals under Edward VI. and Mary; and it is, in fact, essential to the regular proceedings of any assembly. In the former reign they also committed one of their members to the Tower. But in the famous case of Arthur Hall, in 1581, they established the first precedent of punishing one of their own body for a printed libel derogatory to them as a part of the legislature; and they inflicted the threefold penalty of imprisonment, fine, and expulsion. From this time forth it was understood to be the law and usage of parliament that the commons might commit to prison any one of their members for misconduct in the house, or relating to it.* The right of imposing a fine was very rarely asserted after the instance of Hall. But that of expulsion, no earlier precedent whereof has been recorded, became as indubitable as frequent and unquestioned usage could render it. It was carried to a great excess by the long parliament, and again in the year 1680. These, however, were times of extreme violence; and the prevailing faction had an apology in the designs of the court, which required an energy beyond the law to counteract them. The offenses, too, which the whigs thus punished in 1680, were in their effect against the power and even existence of parliament. The privilege was far more unwarrantably exerted by the opposite party in 1714, against sir Richard Steele, expelled the house for writing "The Crisis," a pamphlet reflecting on the ministry. This was, perhaps, the first instance wherein the house of commons so identified itself with the executive administration, independently of the sovereign's person, as to consider itself libeled by those who impugned its measures.†

In a few instances an attempt was made to carry this farther, by declaring the party incapable of sitting in parliament. It is hardly necessary to remark that upon this rested the celebrated question of the Middlesex election in 1769. If a few precedents, and those not before the year 1680, were to determine all controversies of constitutional law, it is plain enough from the Journals that the house have assumed the power of incapacitation. But as such an authority is highly dangerous and unnecessary for any good purpose, and as, according to all legal rules, so extraordinary a power could not be supported except by a sort of prescription which can not be shown, the final resolution of the house of commons, which condemned the votes passed in times of great excitement, appears far more consonant to just principles.

2. The power of each house of parliament over those who do not belong to it is of a more extensive consideration, and has lain open, in some respects, to more doubt than that over its own members. It has been exercised, in the first place, very frequently, and from an early period, in order to protect the members personally, and in their properties, from any thing which has been construed to interfere with the discharge of their functions. Every obstruction in these duties, by assaulting, challenging, insulting any single representative of the commons, has from the middle of the sixteenth century downward—that is, from the beginning of their regular Journals—been justly deemed a breach of privilege, and an offense against the whole body. It has been punished generally by commitment, either to the custody of the house's officer, the sergeant-at-arms, or to the king's prison. This summary proceeding is usually defended by a technical analogy to what are called attachments for contempt, by which every court of record is entitled to punish by imprisonment, if not also by fine, any obstruction to its acts or contumacious resistance of them. But it tended also to raise the dignity of parliament in the eyes of the people, at times when the government, and even the courts of justice, were not greatly inclined to regard it; and has been also a necessary safeguard against the insolence of power. The majority are bound to respect, and indeed have respected, the rights of every member, however

* In 1810, on the committal of sir F. Burdett, the governor of the Tower required the speaker's warrant to be backed by the secretary of state; with which the commons thought fit to put up, though it cut at the root of the privilege of imprisoning *proprio jure*—1845.

† Walpole says, in speaking for Steele, "The liberty of the press is unrestrained; how then shall a part of the legislature dare to punish that as a crime which is not declared to be so by any law framed by the whole?"

obnoxious to them, on all questions of privilege. Even in the case most likely to occur in the present age, that of libels, which by no unreasonable stretch come under the head of obstructions, it would be unjust that a patriotic legislator, exposed to calumny for his zeal in the public cause, should be necessarily driven to a troublesome and uncertain process at law, when the offense so manifestly affects the real interests of parliament and the nation. The application of this principle must of course require a discreet temper, which was not, perhaps, always observed in former times, especially in the reign of William III. Instances, at least, of punishment for breach of privilege by personal reflections are never so common as in the Journals of that turbulent period.

The most usual mode, however, of incurring the animadversion of the house was by molestations in regard to property. It was the most ancient privilege of the commons to be free from all legal process, during the term of the session and for forty days before and after, except on charges of treason, felony, or breach of the peace. I have elsewhere mentioned the great case of Ferrers, under Henry VIII., wherein the house first, as far as we know, exerted the power of committing to prison those who had been concerned in arresting one of its members; and have shown that, after some little intermission, this became their recognized and customary right. Numberless instances occur of its exercise. It was not only a breach of privilege to serve any sort of process upon them, but to put them under the necessity of seeking redress at law for any civil injury. Thus abundant cases are found in the Journals where persons have been committed to prison for entering on the estates of members, carrying away timber, lopping trees, digging coal, fishing in their waters. Their servants, and even their tenants, if the trespass were such as to affect the landlord's property, had the same protection. The grievance of so unparalleled an immunity must have been notorious, since it not only suspended at least the redress of creditors, but enabled rapacious men to establish in some measure unjust claims in respect of property, the alleged trespasses being generally founded on some disputed right. An act, however, was passed, rendering the members of both houses liable to civil suits during the prorogation of parliament.* But they long continued to avenge the private injuries, real or pretended, of their members. On a complaint of breach of privilege by trespassing on a fishery (January 25, 1768), they heard evidence on both sides, and determined that no breach of privilege had been committed; thus indirectly taking on them the decision of a freehold right. A few days after they came to a resolution, "that in case of any complaint of a breach of privilege, hereafter to be made by any member of this house, if the house shall adjudge there is no ground for such complaint, the house will order satisfaction to the person complained of for his costs and expenses incurred by reason of such complaint." But little opportunity was given to try the effect of this resolution, an act having passed in two years afterward which has altogether taken away the exemption from legal process, except as to the immunity from personal arrest, which still continues to be the privilege of both houses of parliament.*

3. A more important class of offenses against privilege is of such as affect either house of parliament collectively. In the reign of Elizabeth we have an instance of one committed for disrespectful words against the commons. A few others, either for words spoken or published libels, occur in the reign of Charles I. even before the long parliament; but those of 1641 can have little weight as precedents, and we may say nearly the same of the unjustifiable proceedings in 1680. Even since the Revolution we find too many proofs of encroaching pride or intemperate passion, to which a numerous assembly is always prone, and which the prevalent doctrine of the house's absolute power in matters of privilege has not contributed much to restrain. The most remarkable may be briefly noticed.

The commons of 1701, wherein a tory spirit was strongly predominant, by what were deemed its factious delays in voting supplies, and in seconding the measures of the king for the security of Europe, had exasperated all those who saw the nation's safety in vigorous preparations for war, and provoked at last the lords to the most angry resolution which one house of parliament in a matter not affecting its privileges has ever recorded against the other.† The grand jury of Kent, and other freeholders of the county, presented accordingly a petition on the 8th of May, 1701,

* 12 Will. III., c. 3.

* 10 Geo. III., c. 50.

† *Resolved*, That whatever ill consequences may arise from the so long deferring the supplies for the year's service are to be attributed to the fatal counsel of putting off the meeting of a parliament so long, and to unnecessary delays of the house of commons.—Lord's Journals, 23d June, 1701.

imploring them to turn their loyal addresses into bills of supply (the only phrase in the whole petition that could be construed into disrespect), and to enable his majesty to assist his allies before it should be too late. The tory faction was wrought to fury by this honest remonstrance. They voted that the petition was scandalous, insolent, and seditious, tending to destroy the constitution of parliament, and to subvert the established government of this realm; and ordered that Mr. Colepepper, who had been most forward in presenting the petition, and all others concerned in it, should be taken into custody of the sergeant. Though no attempt was made on this occasion to call the authority of the house into question by habeas corpus or other legal remedy, it was discussed in pamphlets and in general conversation, with little advantage to a power so arbitrary, and so evidently abused in the immediate instance.

A very few years after this high exercise of authority, it was called forth in another case, still more remarkable and even less warrantable. The house of commons had an undoubted right of determining all disputed returns to the writ of election, and consequently of judging upon the right of every vote. But as the house could not pretend that it had given this right, or that it was not, like any other franchise, vested in the possessor by a legal title, no pretext of reason or analogy could be set up for denying that it might also come, in an indirect manner at least, before a court of justice, and be judged by the common principles of law. One Ashby, however, a burgess of Aylesbury, having sued the returning officer for refusing his vote; and three judges of the king's bench against the opinion of chief-justice Holt, having determined for different reasons that it did not lie, a writ of error was brought in the house of lords, when the judgment was reversed. The house of commons took this up indignantly, and passed various resolutions, asserting their exclusive right to take cognizance of all matters relating to the election of their members. The lords repelled these by contrary resolutions; That by the known laws of this kingdom, every person having a right to give his vote, and being willfully denied by the officer who ought to receive it, may maintain an action against such officer to recover damage for the injury; That the contrary assertion is destructive of the property of the subject, and tends to encourage corruption and partiality in returning officers; that the declaring persons guilty of breach of privilege for prosecuting such actions, or for soliciting and pleading in them, is a manifest assuming a power to control the law, and hinder the course of justice, and subject the property of Englishmen to the arbitrary votes of the house of commons. They ordered a copy of these resolutions to be sent to all the sheriffs, and to be communicated by them to all the boroughs in their respective counties.

A prorogation soon afterward followed, but served only to give breathing-time to the exasperated parties; for it must be observed that, though a sense of dignity and privilege no doubt swelled the majorities in each house, the question was very much involved in the general whig and tory course of politics. But Ashby, during the recess, having proceeded to execution on his judgment, and some other actions having been brought against the returning officer of Aylesbury, the commons again took it up, and committed the parties to Newgate. They moved the court of king's bench for a habeas corpus; upon the return to which, the judges, except Holt, thought themselves not warranted to set them at liberty against the commitment of the house. It was threatened to bring this by writ of error before the lords; and in the disposition of that assembly, it seems probable that they would have inflicted a severe wound on the privileges of the lower house, which must in all probability have turned out a sort of suicide upon their own. But the commons interposed by resolving to commit to prison the counsel and agents concerned in prosecuting the habeas corpus, and by addressing the queen not to grant a writ of error. The queen properly answered, that as this matter, relating to the course of judicial proceedings, was of the highest consequence, she thought it necessary to weigh very carefully what she should do. The lords came to some important resolutions: That neither house of parliament hath any power by any vote or declaration to create to themselves any new privilege that is not warranted by the known laws and customs of parliament; That the house of commons, in committing to Newgate certain persons for prosecuting an action at law, upon pretense that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privileges of that house, have assumed to themselves alone a legislative power, by pretending to attribute the force of law to their declaration, have claimed a jurisdiction not warranted by the constitution, and have assumed a new privilege, to which they can show no title by

the law and custom of parliament; and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the house of commons; That every Englishman who is imprisoned by any authority whatsoever has an undoubted right to a writ of habeas corpus, in order to obtain his liberty by the due course of law; That for the house of commons to punish any person for assisting a prisoner to procure such a writ is an attempt of dangerous consequence, and a breach of the statutes provided for the liberty of the subject; That a writ of error is not of grace but of right, and ought not to be denied to the subject when duly applied for, though at the request of either house of parliament.

These vigorous resolutions produced a conference between the houses, which was managed with more temper than might have been expected from the tone taken on both sides. But, neither of them receding in the slightest degree, the lords addressed the queen, requesting her to issue the writs of error demanded upon the refusal of the king's bench to discharge the parties committed by the house of commons. The queen answered the same day that she should have granted the writs of error desired by them, but finding an absolute necessity of putting an immediate end to the session, she was sensible there could have been no further proceeding upon them. The meaning of this could only be, that by a prorogation all commitments by order of the lower house of parliament are determined, so that the parties could stand in no need of a habeas corpus. But a great constitutional question was thus wholly eluded.

We may reckon the proceedings against Mr. Alexander Murray, in 1751, among the instances wherein the house of commons has been hurried by passion to an undue violence. This gentleman had been active in a contested Westminster election, on an anti-ministerial and perhaps Jacobite interest. In the course of an inquiry before the house, founded on a petition against the return, the high-bailiff named Mr. Murray as having insulted him in the execution of his duty. The house resolved to hear Murray by counsel in his defense, and the high-bailiff also by counsel in support of the charge, and ordered the former to give bail for his appearance from time to time. These, especially the last, were innovations on the practice of parliament, and were justly opposed by the more cool-headed men. After hearing witnesses on both sides, it was resolved that Murray should be committed to Newgate, and should receive this sentence upon his knees. This command he steadily refused to obey, and thus drew on himself a storm of wrath at such insolence and audacity. But the times were no more when the commons could inflict whippings and pillories on the refractory; and they were forced to content themselves with ordering that no person should be admitted to him in prison, which, on account of his ill health, they soon afterward relaxed. The public voice is never favorable to such arbitrary exertions of mere power: at the expiration of the session, Mr. Murray, thus grown from an intriguing Jacobite into a confessor of popular liberty, was attended home by a sort of triumphal procession amidst the applause of the people. In the next session he was again committed on the same charge — a proceeding extremely violent and arbitrary.

It has been always deemed a most important and essential privilege of the houses of parliament, that they may punish in this summary manner by commitment all those who disobey their orders to attend as witnesses, or for any purposes of their constitutional duties. No inquiry could go forward before the house at large or its committees, without this power to enforce obedience, especially when the information is to be extracted from public officers against the secret wishes of the court. It is equally necessary (or rather more so, since evidence not being on oath in the lower house, there can be no punishment in the course of law) that the contumacy or prevarication of witnesses should incur a similar penalty. No man would seek to take away this authority from parliament, unless he is either very ignorant of what has occurred in other times and his own, or is a slave in the fetters of some general theory.

But far less can be advanced for several exertions of power on record in the Journals, which, under the name of privilege, must be reckoned by impartial men irregularities and encroachments, capable only at some periods of a kind of apology from the unsettled state of the constitution. The commons began, in the famous or infamous case of Floyd, to arrogate a power of animadverting upon political offenses, which was then wrested from them by the upper house. But in the first parliament of Charles I. they committed Montagu (afterward the noted semi-popish bishop) to the sergeant on account of a published book containing doctrines they did not approve. For this was evidently the main point, though he was also

charged with reviling two persons who had petitioned the house, which bore a distant resemblance to a contempt. In the long parliament, even from its commencement, every boundary was swept away; it was sufficient to have displeased the majority by act or word; but no precedents can be derived from a crisis of force struggling against force. If we descend to the reign of William III., it will be easy to discover instances of commitments, laudable in their purpose, but of such doubtful legality and dangerous consequence, that no regard to the motive should induce us to justify the precedent. Graham and Burton, the solicitors of the treasury in all the worst state prosecutions under Charles and James, and Jenner, a baron of the exchequer, were committed to the Tower by the council immediately after the king's proclamation, with an intention of proceeding criminally against them. Some months afterward, the suspension of the habeas corpus, which had taken place by bill, having ceased, they moved the king's bench to admit them to bail; but the house of commons took this up, and, after a report of a committee as to precedents, put them in custody of the sergeant-at-arms. On complaints of abuses in victualing the navy, the commissioners of that department were sent for in the sergeant's custody, and only released on bail ten days afterward. But, without minutely considering the questionable instances of privilege that we may regret to find, I will select one wherein the house of commons appear to have gone far beyond either the reasonable or customary limits of privilege, and that with very little pretext of public necessity. In the reign of George I., a newspaper called *Mist's Journal* was notorious as the organ of the Jacobite faction. A passage full of the most impudent longings for the pretender's restoration having been laid before the house, it was resolved, May 28, 1721, "That the said paper is a false, malicious, scandalous, infamous, and traitorous libel, tending to alienate the affections of his majesty's subjects and to excite the people to sedition and rebellion, with an intention to subvert the present happy establishment, and to introduce popery and arbitrary power." They went on after this resolution to commit the printer Mist to Newgate, and to address the king that the authors and publishers of the libel might be prosecuted. It is to be observed that no violation of privilege either was, or indeed could be, alleged as the ground of this commitment; which seems to imply that the house conceived itself to be invested with a general power, at least in all political misdemeanors.

I have not observed any case more recent than this of Mist, wherein any one has been committed on a charge which could not possibly be interpreted as a contempt of the house, or a breach of its privilege. It became, however, the practice, without previously addressing the king, to direct a prosecution by the attorney-general for offenses of a public nature, which the commons had learned in the course of any inquiry, or which had been formally laid before them. This seems to have been introduced about the beginning of the reign of Anne, and is undoubtedly a far more constitutional course than that of arbitrary punishment by overstraining their privilege. In some instances, libels have been publicly burned by the order of one or other house of parliament.

I have principally adverted to the powers exerted by the lower house of parliament, in punishing those guilty of violating their privileges. It will, of course, be understood that the lords are at least equal in authority. In some respects, indeed, they have gone beyond. I do not mean that they would be supposed at present to have cognizance of any offense whatever upon which the commons could not animadvert. Notwithstanding what they claimed in the case of Floyd, the subsequent denial by the commons, and abandonment by themselves, of any original jurisdiction, must stand in the way of their assuming such authority over misdemeanors, more extensively at least than the commons, as has been shown, have in some instances exercised it. But, while the latter have, with very few exceptions, and none since the Restoration, contented themselves with commitment during the session, the lords have sometimes imposed fines, and on some occasions in the reign of George II., as well as later, have adjudged parties to imprisonment for a certain time. In one instance, so late as that reign, they sentenced a man to the pillory; and this had been done several times before. The judgments, however, of earlier ages give far less credit to the jurisdiction than they take from it. Besides the ever-memorable case of Floyd, one John Blount, about the same time (27th November, 1621), was sentenced by the lords to imprisonment and hard labor in Bridewell during life.

It may surprise those who have heard of the happy balance of the English constitution, of the responsibility of every man to the law, and of the security of the subject from all unlimited power, especial-

ly as to personal freedom, that this power of awarding punishment at discretion of the houses of parliament is generally reputed to be universal and uncontrollable. This, indeed, was by no means received at the time when the most violent usurpations under the name of privilege were first made; the power was questioned by the royalist party who became its victims, and, among others, by the gallant Welshman, judge Jenkins, whom the long parliament had shut up in the Tower. But it has been several times brought into discussion before the ordinary tribunals; and the result has been, that if the power of parliament is not unlimited in right, there is at least no remedy provided against its excesses.

The house of lords in 1677 committed to the Tower four peers, among whom was the earl of Shaftesbury, for a high contempt; that is, for calling in question, during a debate, the legal continuance of parliament after a prorogation of more than twelve months. Shaftesbury moved the court of king's bench to release him upon a writ of habeas corpus. But the judges were unanimously of opinion that they had no jurisdiction to inquire into a commitment by the lords of one of their body, or to discharge the party during the session, even though there might be, as appears to have been the case, such technical informality on the face of the commitment as would be sufficient in an ordinary case to set it aside.

Lord Shaftesbury was at this time in vehement opposition to the court. Without insinuating that this had any effect upon the judges, it is certain that a few years afterward they were less inclined to magnify the privileges of parliament. Some who had been committed, very wantonly and oppressively, by the commons in 1680, under the name of abhorrers, brought actions for false imprisonment against Topham, the sergeant-at-arms. In one of these he put in what is called a plea to the jurisdiction, denying the competence of the court of king's bench, inasmuch as the alleged trespass had been done by order of the knights, citizens, and burgesses of parliament. But the judges overruled this plea, and ordered him to plead in bar to the action. We do not find that Topham complied with this; at least judgments appear to have passed against him in these actions. The commons, after the Revolution, entered on the subject, and summoned two of the late judges, Pemberton and Jones, to their bar. Pemberton answered that he remembered little of the case; but if the defendant should plead that he did arrest the plaintiff by order of the house, and should plead that to the jurisdiction of the king's bench, he thought, with submission, he could satisfy the house that such a plea ought to be overruled, and that he took the law to be so very clearly. The house pressed for his reasons, which he rather declined to give. But on a subsequent day he fully admitted that the order of the house was sufficient to take any one into custody, but that it ought to be pleaded in bar, and not to the jurisdiction, which would be of no detriment to the party, nor affect his substantial defense. It did not appear, however, that he had given any intimation from the bench of so favorable a leaning toward the rights of parliament; and his present language might not uncharitably be ascribed to the change of times. The house resolved that the orders and proceedings of this house, being pleaded to the jurisdiction of the court of king's bench, ought not to be overruled; that the judges had been guilty of a breach of privilege, and should be taken into custody.

I have already mentioned that, in the course of the controversy between the two houses on the case of Ashby and White, the commons had sent some persons to Newgate for suing the returning officer of Aylesbury in defiance of their resolutions; and that, on their application to the king's bench to be discharged on their habeas corpus, the majority of the judges had refused it. Three judges — Powis, Gould, and Powell—held that the courts of Westminster Hall could have no power to judge of the commitments of the houses of parliament; that they had no means of knowing what were the privileges of the commons, and consequently could not know their boundaries; that the law and custom of parliament stood on its own basis, and was not to be decided by the general rules of law; that no one had ever been discharged from such a commitment, which was an argument that it could not be done. Holt, the chief-justice, on the other hand, maintained that no privilege of parliament could destroy a man's right, such as that of bringing an action for a civil injury; that neither house of parliament could separately dispose of the liberty and property of the people, which could only be done by the whole legislature; that the judges were bound to take notice of the customs of parliament, because they are part of the law of the land, and might as well be learned as any other part of the law. "It is the law," he said, "that gives the queen her prerogative; it is the law gives jurisdiction to the house of lords, as

it is the law limits the jurisdiction of the house of commons." The eight other judges having been consulted, though not judicially, are stated to have gone along with the majority of the court, in holding that a commitment by either house of parliament was not cognizable at law. But from some of the resolutions of the lords on this occasion which I have quoted above, it may seem probable that, if a writ of error had been ever heard before them, they would have leaned to the doctrine of Holt, unless indeed withheld by the reflection that a similar principle might easily be extended to themselves.

It does not appear that any commitment for breach of privilege was disputed until the year 1751, when Mr. Alexander Murray, of whom mention has been made, caused himself to be brought before the court of king's bench on a habeas corpus. But the judges were unanimous in refusing to discharge him. "The house of commons," said Mr. justice Wright, "is a high court, and it is agreed on all hands that they have power to judge of their own privileges; it need not appear to us what the contempt is for; if it did appear, we could not judge thereof."—"This court," said Mr. justice Denison, "has no jurisdiction in the present case. We granted the habeas corpus, not knowing what the commitment was; but now it appears to be for a contempt of the privileges of the house of commons. What the privileges of either house are we do not know; nor need they tell us what the contempt was, because we can not judge of it; for I must call this court inferior to the commons with respect to judging of their privileges and contempts against them." Mr. justice Foster agreed with the two others, that the house could commit for a contempt, which, he said, Holt had never denied in such a case as this before them. It would be unnecessary to produce later cases which have occurred since the reign of George II., and elicited still stronger expressions from the judges of their incapacity to take cognizance of what may be done by the houses of parliament.

Notwithstanding such imposing authorities, there have not been wanting some who have thought that the doctrine of uncontrollable privilege is both eminently dangerous in a free country, and repugnant to the analogy of our constitution. The manly language of lord Holt has seemed to rest on better principles of public utility, and even perhaps of positive law. It is not, however, to be inferred that the right of either house of parliament to commit persons, even not of their own body, to prison, for contempts or breaches of privilege, ought to be called in question. In some cases this authority is as beneficial, and even indispensable, as it is ancient and established. Nor do I by any means pretend that if the warrant of commitment merely recites the party to have been guilty of a contempt or breach of privilege, the truth of such allegation could be examined upon a return to a writ of habeas corpus, any more than in an ordinary case of felony. Whatever injustice may thus be done can not have redress by any legal means, because the house of commons (or the lords, as it may be) are the fit judges of the fact, and must be presumed to have determined it according to right. But it is a more doubtful question whether, if they should pronounce an offense to be a breach of privilege, as in the case of the Aylesbury men, which a court of justice should perceive to be clearly none, or if they should commit a man on a charge of misdemeanor, and for no breach of privilege at all, as in the case of Mist the printer, such excesses of jurisdiction might not legally be restrained by the judges. If the resolutions of the lords in the business of Ashby and White are constitutional and true, neither house of parliament can create to itself any new privilege; a proposition surely so consonant to the rules of English law, which require prescription or statute as the basis for every right, that few will dispute it; and it must be still less lawful to exercise a jurisdiction over misdemeanors, by committing a party who would regularly be only held to bail on such a charge. Of this I am very certain, that if Mist, in the year 1721, had applied for his discharge on a habeas corpus, it would have been far more difficult to have opposed it on the score of precedent or of constitutional right, than it was for the attorney-general of Charles I., nearly one hundred years before, to resist the famous arguments of Selden and Littleton, in the case of the Buckinghamshire gentlemen committed by the council. If a few scattered acts of power can make such precedents as a court of justice must take as its rule, I am sure the decision, neither in this case nor in that of ship-money, was so unconstitutional as we usually suppose: it was by dwelling on all authorities in favor of liberty, and by setting aside those which made against it, that our ancestors overthrew the claims of unbounded prerogative. Nor is this parallel less striking when we look at the tone of implicit obedience, respect, and confidence with which the judges of the eighteenth century have

spoken of the houses of parliament, as if their sphere were too low for the cognizance of such a transcendent authority. The same language, almost to the words, was heard from the lips of the Hydes and Berkeleys in the preceding age, in reference to the king and to the privy council. But as, when the spirit of the government was almost wholly monarchical, so since it has turned chiefly to an aristocracy, the courts of justice have been swayed toward the predominant influence; not, in general, by any undue motives, but because it is natural for them to support power, to shun offense, and to shelter themselves behind precedent. They have also sometimes had in view the analogy of parliamentary commitments to their own power of attachment for contempt, which they hold to be equally uncontrollable, a doctrine by no means so dangerous to the subject's liberty, but liable also to no trifling objections.

The consequences of this utter irresponsibility in each of the two houses will appear still more serious when we advert to the unlimited power of punishment which it draws with it. The commons, indeed, do not pretend to imprison beyond the session; but the lords have imposed fines and definite imprisonment, and attempts to resist these have been unsuccessful. If the matter is to rest upon precedent, or upon what overrides precedent itself, the absolute failure of jurisdiction in the ordinary courts, there seems nothing (decency and discretion excepted) to prevent their repeating the sentences of James I.'s reign—whipping, branding, hard labor for life. Nay, they might order the usher of the black-rod to take a man from their bar, and hang him up in the lobby. Such things would not be done, and, being done, would not be endured; but it is much that any sworn ministers of the law should, even by indefinite language, have countenanced the legal possibility of tyrannous power in England. The temper of government itself, in modern times, has generally been mild; and this is probably the best ground of confidence in the discretion of parliament; but popular, that is, numerous bodies, are always prone to excess, both from the reciprocal influences of their passions, and the consciousness of irresponsibility, for which reasons a democracy, that is, the absolute government of the majority, is in general the most tyrannical of any. Public opinion, it is true, in this country, imposes a considerable restraint; yet this check is somewhat less powerful in that branch of the legislature which has gone the farthest in chastising breaches of privilege. I would not be understood, however, to point at any more recent discussions on this subject; were it not, indeed, beyond the limits prescribed to me, it might be shown that the house of commons, in asserting its jurisdiction, has receded from much of the arbitrary power which it once arrogated, and which some have been disposed to bestow upon it.

This important topic of parliamentary privilege has been fully discussed, since the first publication of the present work, in the well-known proceedings to which the action Stockdale *vs.* Hansard gave rise. In trying this case, lord Denman told the jury, that the order of the house of commons was not a justification for any man to publish a private libel. In consequence of this decision, the house of commons resolved, May 30, 1837, That, by the law and privilege of parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision, before any court or tribunal elsewhere than in parliament, is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon. And, that for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either house of parliament, is contrary to the law of parliament, and is a breach and contempt of the privileges of parliament.

Of these resolutions, which, as is obvious, go far beyond what the particular case of Stockdale required, it has been well said, in an excellent pamphlet by Mr. Pemberton Leigh, which really exhausts the subject, and was never so much as tolerably answered, that "The question now is, whether each house of parliament has exclusive authority to decide upon the existence and extent of its own privileges, to pronounce at its pleasure upon the breach of those privileges, to bind by its declaration of law all the queen's subjects, between whom in a court of justice a question as to privilege may arise, and to punish at its discretion all persons, suitors, attorneys, counsel, and judges, who may be concerned in bringing those privileges into discussion in a court of justice directly or indirectly."—Pemberton's Letter to Lord Langdale, p. 4.—1837.

In the debates which ensued in the house of commons, those who contended for un-

limited privilege fell under two classes: such as availed themselves of the opinions of the eleven judges who dissented from Holt, in Ashby *vs.* White, and of some later dicta: and such as, apparently indifferent to what courts of justice may have held, rested upon some paramount sovereignty of the houses of parliament, some uncontrollable right of exercising discretionary power for the public good, analogous to what was once supposed to be vested in the crown. If we but substitute prerogative of the crown for privileges of parliament in the resolutions of 1837, we may ask whether, in the worst times of the Tudors and Stuarts, such a doctrine was ever laid down in express terms by any grave authority. With these there could be no argument; the others had certainly as much right to cite legal authorities in their favor as their opponents.

The commitment of the sheriffs of London, in 1840, for executing a writ of the queen's bench, is recent in our remembrance; as well as that the immediate question was set at rest by a statute, 3 & 4 Vict., c. 9, which legalizes publications under the authority of either house of parliament, leaving, by a special proviso, their privileges as before. But the main dispute between arbitrary and limited power is by no means determined; and, while great confidence may be placed in the caution which commonly distinguishes the leaders of parties, there will always be found many who, possessing individually a small fraction of despotic power, will not abandon it on any principle of respecting public liberty. It is observable, though easily to be accounted for, and conformable to what occurred in the long parliament, that, among the most strenuous assertors of unmeasured privilege, are generally found many not celebrated for any peculiar sympathy with the laws, the crown, and the constitution.

CHAPTER XVII.

ON THE CONSTITUTION OF SCOTLAND.

§ 1. Early State of Scotland. Introduction of Feudal System. § 2. Scots Parliament. § 3. Power of the Aristocracy. § 4. Royal Influence in Parliament. § 5. Judicial Power. Court of Session. § 6. Reformation. § 7. Power of the Presbyterian Clergy. Their Attempts at Independence on the State. Andrew Melville. § 8. Success of James VI. in restraining them. § 9. Establishment of Episcopacy. § 10. Innovations of Charles I. § 11. Arbitrary Government. § 12. Civil War. § 13. Tyrannical Government of Charles II. § 14. Reign of James VII. § 15. Revolution and Establishment of Presbytery. § 16. Reign of William III. § 17. Act of Security. Union. Gradual Decline of Jacobitism.

§ 1. IT is not very profitable to inquire into the constitutional antiquities of a country which furnishes no authentic historian, nor laws, nor charters, to guide our research, as is the case with Scotland before the twelfth century. Her institutions were wholly Celtic until that era, and greatly similar to those of Ireland. A total, though probably gradual, change must therefore have taken place in the next age, brought about by means which have not been satisfactorily explained. The crown became strictly hereditary, the governors of districts took the appellation of earls, the whole kingdom was subjected to a feudal tenure, the Anglo-Norman laws, tribunals, local and municipal magistracies, were introduced as far as the royal influence could prevail; above all, a surprising number of families, chiefly Norman, but some of Saxon or Flemish descent, settled upon estates granted by the kings of Scotland, and became the founders of its aristocracy. It was, as truly as some time afterward in Ireland, the encroachment of a Gothic and feudal polity upon the inferior civilization of the Celts, though accomplished with far less resistance, and not quite so slowly. Yet the Highland tribes long adhered to their ancient usages; nor did the laws of English origin obtain in some other districts, two or three centuries after their establishment on both sides of the Forth.

§ 2. It became almost a necessary consequence from this adoption of the feudal system, and assimilation to the English institutions, that the kings of Scotland would have their general council or parliament upon nearly the same model as that of the Anglo-Norman sovereigns they so studiously imitated. If the statutes ascribed to William the Lion,

contemporary with our Henry II., are genuine, they were enacted, as we should expect to find, with the concurrence of the bishops, abbots, barons, and other good men (probi homines) of the land; meaning doubtless the inferior tenants in capite. These laws, indeed, are questionable, and there is a great want of unequivocal records till almost the end of the thirteenth century. The representatives of boroughs are first distinctly mentioned in 1326, under Robert I.; though some have been of opinion that vestiges of their appearance in parliament may be traced higher; but they are not enumerated among the classes present in one held in 1315. In the ensuing reign of David II., the three estates of the realm are expressly mentioned as the legislative advisers of the crown.

A Scots parliament resembled an English one in the mode of convocation, in the ranks that composed it, in the enacting powers of the king, and the necessary consent of the three estates, but differed in several very important respects. No freeholders, except tenants in capite, had ever any right of suffrage; which may, not improbably, have been in some measure owing to the want of that Anglo-Saxon institution, the county court. These feudal tenants of the crown came in person to parliament, as they did in England till the reign of Henry III., and sat together with the prelates and barons in one chamber. A prince arose in Scotland in the first part of the fifteenth century, resembling the English Justinian in his politic regard to strengthening his own prerogative and to maintaining public order. It was enacted by a law of James I., in 1427, that the smaller barons and free tenants "need not to come to parliament, so that of every sheriffdom there be sent two or more wise men, chosen at the head court," to represent the rest. These were to elect a speaker, through whom they were to communicate with the king and other estates. This was evidently designed as an assimilation to the English house of commons. But the statute not being imperative, no regard was paid to this permission; and it is not till 1587 that we find the representation of the Scots counties finally established by law; though one important object of James's policy was never attained, the different estates of parliament having always voted promiscuously, as the spiritual and temporal lords in England.

§ 3. But no distinction between the national councils of the two kingdoms was more essential than what appears to have been introduced into the Scots parliament under David II. In the year 1367, a parliament having met at Scone, a

committee was chosen by the three estates, who seem to have had full powers delegated to them, the others returning home on account of the advanced season. The same was done in one held next year, without any assigned pretext. But in 1369 this committee was chosen only to prepare all matters determinable in parliament, or fit to be therein treated, for the decision of the three estates on the last day but one of the session. The former scheme appeared possibly, even to those careless and unwilling legislators, too complete an abandonment of their function; but, even modified as it was in 1369, it tended to devolve the whole business of parliament on this elective committee, subsequently known by the appellation of lords of the articles. It came at last to be the general practice, though some exceptions to this rule may be found, that nothing was laid before parliament without their previous recommendation; and there seems reason to think that in the first parliament of James I., in 1424, such full powers were delegated to the committee as had been granted before in 1367 and 1368, and that the three estates never met again to sanction their resolutions. The preparatory committee is not uniformly mentioned in the preamble of statutes made during the reign of this prince and his next two successors; but there may be no reason to infer from thence that it was not appointed. From the reign of James IV. the lords of articles are regularly named in the records of every parliament.

It is said that a Scots parliament, about the middle of the fifteenth century, consisted of near 190 persons. We do not find, however, that more than half this number usually attended. A list of those present in 1472 gives but fourteen bishops and abbots, twenty-two earls and barons, thirty-four lairds or lesser tenants in capite, and eight deputies of boroughs. The royal boroughs entitled to be represented in parliament were above thirty; but it was a common usage to choose the deputies of other towns as their proxies. The great object with them, as well as with the lesser barons, was to save the cost and trouble of attendance. It appears, indeed, that they formed rather an insignificant portion of the legislative body. They are not named as consenting parties in several of the statutes of James III.; and it seems that on some occasions they had not been summoned to parliament, for an act was passed in 1504 "that the commissaries and headmen of the burghs be warned when taxes or constitutions are given, to have their advice therein, as one of the three estates of the realm." This, however, is an express recogni-

tion of their right, though it might have been set aside by an irregular exercise of power.

§ 4. It was a natural result from the constitution of a Scots parliament, together with the general state of society in that kingdom, that its efforts were almost uniformly directed to augment and invigorate the royal authority. Their statutes afford a remarkable contrast to those of England in the absence of provisions against the exorbitances of prerogative. Robertson has observed that the kings of Scotland, from the time at least of James I., acted upon a steady system of repressing the aristocracy; and though this has been called too refined a supposition, and attempts have been made to explain otherwise their conduct, it seems strange to deny the operation of a motive so natural, and so readily to be inferred from their measures. The causes so well pointed out by this historian, and some that might be added; the defensible nature of great part of the country; the extensive possessions of some powerful families; the influence of feudal tenure and Celtic clanship; the hereditary jurisdictions, hardly controlled, even in theory, by the supreme tribunals of the crown; the custom of entering into bonds of association for mutual defense; the frequent minorities of the reigning princes; the necessary abandonment of any strict regard to monarchical supremacy during the struggle for independence against England; the election of one great nobleman to the crown, and its devolution upon another; the residence of the first two of the Stuart name in their own remote domains; the want of any such effective counterpoise to the aristocracy as the sovereigns of England possessed in its yeomanry and commercial towns; all these together placed the kings of Scotland in a situation which neither for their own nor their people's interest they could be expected to endure. But an impatience of submitting to the insolent and encroaching temper of their nobles drove James I. (before whose time no settled scheme of reviving the royal authority seems to have been conceived) and his next two descendants into some courses which, though excused or extenuated by the difficulties of their position, were rather too precipitate and violent, and redounded at last to their own destruction. The reign of James IV., from his accession in 1488 to his unhappy death at Flodden, in 1513, was the first of tolerable prosperity, the crown having by this time obtained no inconsiderable strength, and the course of law being somewhat more established, though the aristocracy were abundantly capable of withstanding any material encroachment upon their privileges.

Though subsidies were of course occasionally demanded, yet from the poverty of the realm, and the extensive domains which the crown retained, they were much less frequent than in England, and thus one principal source of difference was removed; nor do we read of any opposition in parliament to what the lords of articles thought fit to propound. Those who disliked the government stood aloof from such meetings, where the sovereign was in his vigor, and had sometimes crushed a leader of faction by a sudden stroke of power; confident that they could better frustrate the execution of laws than their enactment, and that questions of right and privilege could never be tried so advantageously as in the field. Hence it is, as I have already observed, that we must not look to the statute-book of Scotland for many limitations of monarchy. Even in one of James II., which enacts that none of the royal domains shall for the future be alienated, and that the king and his successors shall be sworn to observe this law, it may be conjectured that a provision rather derogatory in semblance to the king's dignity was introduced by his own suggestion, as an additional security against the importunate solicitations of the aristocracy whom the statute was designed to restrain. The next reign was the struggle of an imprudent and, as far as his means extended, despotic prince against the spirit of his subjects. In a parliament of 1487, we find almost a solitary instance of a statute that appears to have been directed against some illegal proceedings of the government. It is provided that all civil suits shall be determined by the ordinary judges, and not before the king's council. James III. was killed the next year in attempting to oppose an extensive combination of the rebellious nobility. In the reign of James IV., the influence of the aristocracy shows itself rather more in legislation; and two peculiarities deserve notice, in which, as it is said, the legislative authority of a Scots parliament was far higher than that of our own. They were not only often consulted about peace or war, which in some instances was the case in England, but, at least in the sixteenth century, their approbation seems to have been necessary. This, though not consonant to our modern notions, was certainly no more than the genius of the feudal system and the character of a great deliberative council might lead us to expect; but a more remarkable singularity was, that what had been propounded by the lords of articles, and received the ratification of the three estates, did not require the king's consent to give it complete validity. Such, at least, is said to have been the

Scots constitution in the time of James VI.; though we may demand very full proof of such an anomaly, which the language of their statutes, expressive of the king's enacting power, by no means leads us to infer.

§ 5. The kings of Scotland had always their aula or curia regis, claiming a supreme judicial authority, at least in some causes, though it might be difficult to determine its boundaries, or how far they were respected. They had also bailiffs to administer justice in their own domains, and sheriffs in every county for the same purpose, wherever grants of regality did not exclude their jurisdiction. These regalities were hereditary and territorial; they extended to the infliction of capital punishment; the lord possessing them might reclaim or repledge (as it was called, from the surety he was obliged to give that he would himself do justice) any one of his vassals who was accused before another jurisdiction. The barons, who also had cognizance of most capital offenses, and the royal boroughs, enjoyed the same privilege. An appeal lay, in civil suits, from the baron's court to that of the sheriff or lord of regality, and ultimately to the parliament, or to a certain number of persons to whom it delegated its authority. This appellant jurisdiction of parliament, as well as that of the king's privy council, which was original, came, by a series of provisions from the year 1425 to 1532, into the hands of a supreme tribunal thus gradually constituted in its present form, the Court of Session. It was composed of fifteen judges, half of whom, besides the president, were at first churchmen, and soon established an entire subordination of the local courts in all civil suits. But it possessed no competence in criminal proceedings; the hereditary jurisdictions remained unaffected for some ages, though the king's two justiciaries, replaced afterward by a court of six judges, went their circuits even through those counties wherein charters of regality had been granted. Two remarkable innovations seem to have accompanied, or to have been not far removed in time from, the first formation of the court of session—the discontinuance of juries in civil causes, and the adoption of so many principles from the Roman law as have given the jurisprudence of Scotland a very different character from our own.

§ 6. In the reign of James V. it might appear probable that by the influence of laws favorable to public order, better enforced through the council and court of session than before, by the final subjugation of the house of Douglas and of the earls of Ross in the North, and some slight increase of wealth

in the towns, conspiring with the general tendency of the sixteenth century throughout Europe, the feudal spirit would be weakened and kept under in Scotland, or display itself only in a parliamentary resistance to what might become in its turn dangerous, the encroachments of arbitrary power. But immediately afterward a new and unexpected impulse was given; religious zeal, so blended with the ancient spirit of aristocratic independence that the two motives are scarcely distinguishable, swept before it in the first whirlwind almost every vestige of the royal sovereignty. The Roman catholic religion was abolished with the forms indeed of a parliament, but of a parliament not summoned by the crown, and by acts that obtained not its assent. The Scots church had been immensely rich; its riches had led, as everywhere else, to neglect of duties and dissoluteness of life; and these vices had met with their usual punishment in the people's hatred.[1] The reformed doctrines gained a more rapid and general ascendency than in England, and were accompanied with a more strenuous and uncompromising enthusiasm. It is probable that no sovereign retaining a strong attachment to the ancient creed would long have been permitted to reign; and Mary is entitled to every presumption, in the great controversy that belongs to her name, that can reasonably be founded on this admission. But, without deviating into that long and intricate discussion, it may be given as the probable result of fair inquiry that to impeach the characters of most of her adversaries would be a far easier task than to exonerate her own.[2]

[1] At least one-half of the wealth of Scotland was in the hands of the clergy, chiefly of a few individuals.

[2] I have read a good deal on this celebrated controversy; but where so much is disputed it is not easy to form an opinion on every point. But, upon the whole, I think there are only two hypotheses that can be advanced with any color of reason. The first is, that the murder of Darnley was projected by Bothwell, Maitland, and some others, without the queen's express knowledge, but with a reliance on her passion for the former, which would lead her both to shelter him from punishment, and to raise him to her bed; and that, in both respects, this expectation was fully realized by a criminal connivance at the escape of one whom she must believe to have been concerned in her husband's death, and by a still more infamous marriage with him. This, it appears to me, is a conclusion that may be drawn by reasoning on admitted facts, according to the common rules of presumptive evidence. The second supposition is, that she had given a previous consent to the assassination. This is rendered probable by several circumstances, and especially by the famous letters and sonnets, the genuineness of which has been so warmly disputed. I must confess that they seem to me authentic, and that Mr. Laing's dissertation on the murder of Darnley has rendered Mary's innocence, even as to participation in that crime, an untenable proposition.

I shall dismiss a subject so foreign to my purpose with remarking a fallacy which affects almost the whole argument of Mary's most strenuous advocates. They seem to fancy that if the earls of Murray and Morton, and secretary Maitland of Lethington, can be proved to have been concerned in Darnley's murder, the queen herself is

§ 7. The history of Scotland from the reformation assumes a character not only unlike that of preceding times, but to which there is no parallel in modern ages. It became a contest, not between the crown and the feudal aristocracy, as before, nor between the assertors of prerogative and of privilege, as in England, nor between the possessors of established power and those who deemed themselves oppressed by it, as is the usual source of civil discord, but between the temporal and spiritual authorities, the crown and the church—that in general supported by the legislature, this sustained by the voice of the people. Nothing of this kind, at least in any thing like so great a degree, has occurred in other protestant countries—the Anglican church being, in its original constitution, bound up with the state as one of its component parts, but subordinate to the whole; and the ecclesiastical order in the kingdoms and commonwealths of the Continent being either destitute of temporal authority, or at least subject to the civil magistrate's supremacy.

Knox, the founder of the Scots reformation, and those who concurred with him, both adhered to the theological system of Calvin, and to the scheme of polity he had introduced at Geneva, with such modifications as became necessary from the greater scale on which it was to be practiced. Each parish had its minister, lay elder, and deacon, who held their kirk-session for spiritual jurisdiction and other purposes; each ecclesiastical province its synod of ministers and delegated elders, presided over by a superintendent; but the supreme power resided in the general assembly of the Scots church, constituted of all ministers of parishes, with an admixture of delegated laymen, to which appeals from inferior judicatories lay, and by whose determinations or canons the whole were bound. The superintendents had such a degree of episcopal authority as seems implied in their name, but concurrently with the parochial ministers, and in subordination to the general assembly; the number of these was designed to be ten, but only five were appointed. This form of church polity was set up in 1560; but according to the irregular state of things at that time in Scotland, though fully admitted and acted upon, it had only the authority of the church, with no confirmation of parliament, which seems

at once absolved. But it is generally agreed that Maitland was one of those who conspired with Bothwell for this purpose; and Morton, if he were not absolutely consenting, was, by his own acknowledgment at his execution, apprised of the conspiracy. With respect to Murray, indeed, there is not a shadow of evidence, nor had he any probable motive to second Bothwell's schemes; but, even if his participation were presumed, it would not alter in the slightest degree the proofs as to the queen.

to have been the first step of the former toward the independency it came to usurp. Meanwhile it was agreed that the Roman catholic prelates, including the regulars, should enjoy two-thirds of their revenues, as well as their rank and seats in parliament, the remaining third being given to the crown, out of which stipends should be allotted to the protestant clergy. Whatever violence may be imputed to the authors of the Scots reformation, this arrangement seems to display a moderation which we should vainly seek in our own. The new church was, however, but inadequately provided for; and perhaps we may attribute some part of her subsequent contumacy and encroachment on the state to the exasperation occasioned by the latter's parsimony, or rather rapaciousness, in the distribution of ecclesiastical estates.

It was doubtless intended by the planners of a presbyterian model that the bishoprics should be extinguished by the death of the possessors, and their revenues be converted partly to the maintenance of the clergy, partly to other public interests. But it suited better the men in power to keep up the old appellations for their own benefit. As the catholic prelates died away, they were replaced by protestant ministers, on private compacts to alienate the principal part of the revenues to those through whom they were appointed. After some hesitation, a convention of the church, in 1572, agreed to recognize these bishops until the king's majority and a final settlement by the legislature, and to permit them a certain portion of jurisdiction, though not greater than that of the superintendent, and equally subordinate to the general assembly. They were not consecrated, nor would the slightest distinction of order have been endured by the church. Yet even this moderated episcopacy gave offense to ardent men, led by Andrew Melville, the second name to Knox in the ecclesiastical history of Scotland; and, notwithstanding their engagement to leave things as they were till the determination of parliament, the general assembly soon began to restrain the bishops by their own authority, and finally to enjoin them, under pain of excommunication, to lay down an office which they voted to be destitute of warrant from the word of God, and injurious to the church. Some of the bishops submitted to this decree; others, as might be expected, stood out in defense of their dignity, and were supported both by the king and by all who conceived that the supreme power of Scotland, in establishing and endowing the church, had not constituted a society independent of the commonwealth. A series of acts in

1584, at a time when the court had obtained a temporary ascendant, seemed to restore the episcopal government in almost its pristine lustre. But the popular voice was loud against episcopacy; the prelates were discredited by their simoniacal alienations of church revenues, and by their connection with the court; the king was tempted to annex most of their lands to the crown by an act of parliament in 1587; Adamson, archbishop of St. Andrew's, who had led the episcopal party, was driven to a humiliating retractation before the general assembly; and, in 1592, the sanction of the legislature was for the first time obtained to the whole scheme of presbyterian polity, and the laws of 1584 were for the most part abrogated.

The school of Knox, if so we may call the early presbyterian ministers of Scotland, was full of men breathing their master's spirit—acute in disputation, eloquent in discourse, learned beyond what their successors have been, and intensely zealous in the cause of reformation. They wielded the people at will, who, except in the Highlands, threw off almost with unanimity the old religion, and took alarm at the slightest indication of its revival. Their system of local and general assemblies infused, together with the forms of a republic, its energy and impatience of exterior control, combined with the concentration and unity of purpose that belongs to the most vigorous government. It must be confessed that the unsettled state of the kingdom, the faults and weakness of the regents Lennox and Morton, the inauspicious beginning of James's personal administration under the sway of unworthy favorites, the real perils of the reformed church, gave no slight pretext for the clergy's interference with civil policy. Not merely in their representative assemblies, but in the pulpits, they perpetually remonstrated, in no guarded language, against the misgovernment of the court, and even the personal indiscretions of the king. This they pretended to claim as a privilege beyond the restraint of law. Andrew Melville having been summoned before the council in 1584, to give an account of some seditious language alleged to have been used by him in the pulpit, declined its jurisdiction on the ground that he was only responsible, in the first instance, to his presbytery for words so spoken, of which the king and council could not judge without violating the immunities of the church. Precedents for such an immunity it would not have been difficult to find; but they must have been sought in the archives of the enemy. It was rather early for the new republic to emulate the despotism she had

overthrown. Such, however, is the uniformity with which the same passions operate on bodies of men in similar circumstances; and so greedily do those whose birth has placed them far beneath the possession of power intoxicate themselves with its unaccustomed enjoyments.

§ 8. James, however, and his councilors were not so feeble as to endure this open renewal of those extravagant pretensions which Rome had taught her priesthood to assert. Melville fled to England; and a parliament that met the same year sustained the supremacy of the civil power with that violence and dangerous latitude of expression so frequent in the Scots statute-book. It was made treason to decline the jurisdiction of the king or council in any matter, to seek the diminution of the power of any of the three estates of parliament, which struck at all that had been done against episcopacy, to utter, or to conceal, when heard from others in sermons or familiar discourse, any false or slanderous speeches to the reproach of the king, his council, or their proceedings, or to the dishonor of his parents and progenitors, or to meddle in the affairs of state. It was forbidden to treat or consult on any matter of state, civil or ecclesiastical, without the king's express command—thus rendering the general assembly for its chief purposes, if not its existence, altogether dependent on the crown. Such laws not only annihilated the pretended immunities of the church, but went very far to set up that tyranny which the Stuarts afterward exercised in Scotland till their expulsion. These were in part repealed, so far as affected the church, in 1592; but the crown retained the exclusive right of convening its general assembly, to which the presbyterian hierarchy still gives but an evasive and reluctant obedience.

These bold demagogues were not long in availing themselves of the advantages which they had obtained in the parliament of 1592, and through the troubled state of the realm. They began again to intermeddle with public affairs, the administration of which was sufficiently open to censure. This license brought on a new crisis in 1596. Black, one of the ministers of St. Andrew's, inveighing against the government from the pulpit, painted the king and queen, as well as their council, in the darkest colors, as dissembling enemies to religion. James, incensed at this attack, caused him to be summoned before the privy council. The clergy decided to make common cause with the accused. The council of the church, a standing committee lately appointed by the general assembly, enjoined Black to decline the jurisdiction. The king by

proclamation directed the members of this council to retire to their several parishes. They resolved, instead of submitting, that since they were convened by the warrant of Christ, in a most needful and dangerous time, to see unto the good of the church, they should obey God rather than man. The king offered to stop the proceedings, if they would but declare that they did not decline the civil jurisdiction absolutely, but only in the particular case, as being one of slander, and consequently of ecclesiastical competence; for Black had asserted before the council that speeches delivered in the pulpits, although alleged to be treasonable, could not be judged by the king until the church had first taken cognizance thereof. But these ecclesiastics, in the full spirit of the thirteenth century, determined by a majority not to recede from their plea. Their contest with the court soon excited the populace of Edinburgh, and gave rise to a tumult which, whether dangerous or not to the king, was what no government could pass over without utter loss of authority.

§ 9. It was in church assemblies alone that James found opposition. His parliament, as had invariably been the case in Scotland, went readily into all that was proposed to them; nor can we doubt that the gentry must for the most part have revolted from these insolent usurpations of the ecclesiastical order. It was ordained in parliament that every minister should declare his submission to the king's jurisdiction in all matters civil and criminal, that no ecclesiastical judicatory should meet without the king's consent, and that a magistrate might commit to prison any minister reflecting in his sermons on the king's conduct. He had next recourse to an instrument of power more successful frequently than intimidation, and generally successful in conjunction with it —gaining over the members of the general assembly, some by promises, some by exciting jealousies, till they surrendered no small portion of what had passed for the privileges of the church. The crown obtained by their concession, which then seemed almost necessary to confirm what the legislature had enacted, the right of convoking assemblies, and of nominating ministers in the principal towns. James followed up this victory by a still more important blow. It was enacted that fifty-one ministers, on being nominated by the king to titular bishopries and other prelacies, might sit in parliament as representatives of the church. This seemed justly alarming to the opposite party; nor could the general assembly be brought to acquiesce without such very considerable restrictions upon these suspicious commissioners, by which

name they prevailed to have them called, as might in some measure afford security against the revival of that episcopal domination, toward which the endeavors of the crown were plainly directed. But the king paid little regard to these regulations; and thus the name and parliamentary station of bishops, though without their spiritual functions, were restored in Scotland after only six years from their abolition.

A king like James, not less conceited of his wisdom than full of the dignity of his station, could not avoid contracting that insuperable aversion to the Scots presbytery which he expressed in his Basilicon Doron before his accession to the English throne, and more vehemently on all occasions afterward. He found a very different race of churchmen, well trained in the supple school of courtly conformity, and emulous flatterers both of his power and his wisdom. The ministers of Edinburgh had been used to pray that God would turn his heart: Whitgift, at the conference of Hampton Court, falling on his knees, exclaimed that he doubted not his majesty spoke by the special grace of God. It was impossible that he should not redouble his endeavors to introduce so convenient a system of ecclesiastical government into his native kingdom. He began, accordingly, to prevent the meetings of the general assembly by continued prorogations. Some hardy presbyterians ventured to assemble by their own authority, which the lawyers construed into treason. The bishops were restored by parliament, in 1606, to a part of their revenues, the act annexing these to the crown being repealed. They were appointed by an ecclesiastical convention, more subservient to the crown than formerly, to be perpetual moderators of provincial synods. The clergy still gave way with reluctance; but the crown had an irresistible ascendency in parliament; and in 1610 the episcopal system was thoroughly established. The powers of ordination, as well as jurisdiction, were solely vested in the prelates; a court of high commission was created on the English model; and, though the general assembly of the church still continued, it was merely as a shadow, and almost mockery, of its original importance. The bishops now repaired to England for consecration—a ceremony deemed essential in the new school that now predominated in the Anglican church; and this gave a final blow to the polity in which the Scottish reformation had been founded. With far more questionable prudence, James, some years afterward, forced upon the people of Scotland what were called the five articles of

Perth, reluctantly adopted by a general assembly held there in 1617. These were matters of ceremony, such as the posture of kneeling in the eucharist, the rite of confirmation, and the observance of certain holidays, but enough to alarm a nation fanatically abhorrent of every approximation to the Roman worship, and already incensed by what they deemed the corruption and degradation of their church.

That church, if indeed it preserved its identity, was wholly changed in character, and became as much distinguished in its episcopal form by servility and corruption as during its presbyterian democracy by action and turbulence. The bishops at its head, many of them abhorred by their own countrymen as apostates and despised for their vices, looked for protection to the sister church of England in its pride and triumph. It had long been the favorite project of the court, as it naturally was of the Anglican prelates, to assimilate in all respects the two establishments. That of Scotland still wanted one essential characteristic, a regular liturgy. But in preparing what was called the service-book, the English model was not closely followed; the variations having all a tendency toward the Romish worship. It is far more probable that Laud intended these to prepare the way for a similar change in England, than that, as some have surmised, the Scots bishops, from a notion of independence, chose thus to distinguish their own ritual. What were the consequences of this unhappy innovation, attempted with that ignorance of mankind which kings and priests, when left to their own guidance, usually display, it is here needless to mention. In its ultimate results, it preserved the liberties and overthrew the monarchy of England. In its more immediate effects, it gave rise to the national covenant of Scotland; a solemn pledge of unity and perseverance in a great public cause, long since devised when the Spanish armada threatened the liberties and religion of all Britain, but now directed against the domestic enemies of both. The episcopal government had no friends, even among those who served the king. To him it was dear by the sincerest conviction, and by its connection with absolute power, still more close and direct than in England. But he had reduced himself to a condition where it was necessary to sacrifice his authority in the smaller kingdom, if he would hope to preserve it in the greater; and in this view he consented, in the parliament of 1641, to restore the presbyterian discipline of the Scots church; an offense against his conscience (for such his prejudices led him to consider it) which he deeply afterward re-

pented, when he discovered how absolutely it had failed of serving his interests.

§ 10. In the great struggle with Charles against episcopacy, the encroachments of arbitrary rule, for the sake of which, in a great measure, he valued that form of church polity, were not overlooked; and the parliament of 1641 procured some essential improvements in the civil constitution of Scotland. Triennial sessions of the legislature, and other salutary reformations, were borrowed from their friends and coadjutors in England. But what was still more important, was the abolition of that destructive control over the legislature which the crown had obtained through the lords of articles. These had doubtless been originally nominated by the several estates in parliament, solely to expedite the management of business, and relieve the entire body from attention to it. But, as early as 1561, we find a practice established, that the spiritual lords should choose the temporal, generally eight in number, who were to sit on this committee, and conversely; the burgesses still electing their own. To these it became usual to add some of the officers of state; and in 1617 it was established that eight of them should be on the list. Charles procured, without authority of parliament, a further innovation in 1633. The bishops chose eight peers, the peers eight bishops; and these appointed sixteen commissioners of shires and boroughs. Thus the whole power was devolved upon the bishops, the slaves and sycophants of the crown. The parliament itself met only on two days, the first and last of their pretended session, the one time in order to choose the lords of articles, the other to ratify what they proposed. So monstrous an anomaly could not long subsist in a high-spirited nation. This improvident assumption of power by low-born and odious men precipitated their downfall, and made the destruction of the hierarchy appear the necessary guaranty for parliamentary independence, and the ascendant of the aristocracy. But lest the court might, in some other form, regain this preliminary or initiative voice in legislation, which the experience of many governments has shown to be the surest method of keeping supreme authority in their hands, it was enacted in 1641, that each estate might choose lords of articles or not, at its discretion; but that all propositions should in the first instance be submitted to the whole parliament, by whom such only as should be thought fitting might be referred to the committee of articles for consideration.

§ 11. This parliament, however, neglected to abolish one

of the most odious engines that tyranny ever devised against public virtue, the Scots law of treason. It had been enacted by a statute of James I. in 1424, that all leasing-makers, and tellers of what might engender discord between the king and his people, should forfeit life and goods. The act was renewed under James II., and confirmed in 1540. It was aimed at the factious aristocracy, who perpetually excited the people by invidious reproaches against the king's administration. But in 1584, a new antagonist to the crown having appeared in the presbyterian pulpits, it was determined to silence opposition by giving the statute of leasing-making, as it was denominated, a more sweeping operation. Its penalties were accordingly extended to such as should "utter untrue or slanderous speeches, to the disdain, reproach, and contempt of his highness, his parents and progenitors, or should meddle in the affairs of his highness or his estate." The "hearers and not reporters thereof" were subjected to the same punishment. It may be remarked that these Scots statutes are worded with a latitude never found in England, even in the worst times of Henry VIII. Lord Balmerino, who had opposed the court in the parliament of 1633, retained in his possession a copy of an apology intended to have been presented by himself and other peers in their exculpation, but from which they had desisted, in apprehension of the king's displeasure. This was obtained clandestinely, and in breach of confidence, by some of his enemies; and he was indicted on the statute of leasing-making, as having concealed a slander against his majesty's government. A jury was returned with gross partiality; yet so outrageous was the attempted violation of justice that Balmerino was only convicted by a majority of eight against seven; for in Scots juries a simple majority was sufficient, as it is still in all cases except treason. It was not thought expedient to carry this sentence into execution; but the kingdom could never pardon its government so infamous a stretch of power. The statute itself, however, seems not to have shared the same odium; we do not find any effort made for its repeal; and the ruling party in 1641, unfortunately, did not scruple to make use of its sanguinary provisions against their own adversaries.

The conviction of Balmerino is hardly more repugnant to justice than some other cases in the long reign of James VI. Eight years after the execution of the earl of Gowrie and his brother, one Sprot, a notary, having indiscreetly mentioned that he was in possession of letters, written by a person since dead, which evinced his participation in that mysterious

conspiracy, was put to death for concealing them. Thomas Ross suffered, in 1618, the punishment of treason for publishing at Oxford a blasphemous libel, as the indictment calls it, against the Scots nation.[3] I know not what he could have said worse than what their sentence against him enabled others to say, that, amidst a great vaunt of Christianity and civilization, they took away men's lives by such statutes, and such constructions of them, as could only be paralleled in the annals of the worst tyrants. By an act of 1584, the privy council were empowered to examine an accused party on oath; and if he declined to answer any question, it was held denial of their jurisdiction, and amounted to a conviction of treason. This was experienced by two Jesuits, Crighton and Ogilvy, in 1610 and 1615, the latter of whom was executed. One of the statutes upon which he was indicted contained the singular absurdity of "annulling and rescinding every thing done, or hereafter to be done, in prejudice of the royal prerogative, in any time by-gone or to come."

§ 12. It was perhaps impossible that Scotland should remain indifferent in the great quarrel of the sister kingdom. But having set her heart upon two things incompatible in themselves from the outset, according to the circumstances of England, and both of them ultimately impracticable—the continuance of Charles on the throne and the establishment of a presbyterian church—she fell into a long course of disaster and ignominy, till she held the name of a free constitution at the will of a conqueror. Of the three most conspicuous among her nobility in this period, each died by the hand of the executioner; but the resemblance is in nothing besides; and the characters of Hamilton, Montrose, and Argyle are not less contrasted than the factions of which they were the leaders. Humbled and broken down, the people looked to the re-establishment of Charles II. on the throne of his fathers, though brought about by the sternest minister of Cromwell's tyranny, not only as the augury of prosperous days, but as the obliteration of public dishonor.

§ 13. They were miserably deceived in every hope. Thirty infamous years consummated the misfortunes and degra-

[3] The Gowrie conspiracy is well known to be one of the most difficult problems in history. Arnot has given a very good account, "Criminal Trials," p. 20, and shown its truth, which could not reasonably be questioned, whatever motive we may assign for it. He has laid stress on Logan's letters, which appear to have been unaccountably slighted by some writers. I have long had a suspicion, founded on these letters, that the earl of Bothwell, a daring man of desperate fortunes, was in some manner concerned in the plot, of which the earl of Gowrie and his brother were the instruments.

dation of Scotland. Her factions have always been more sanguinary, her rulers more oppressive, her sense of justice and humanity less active, or at least shown less in public acts, than can be charged against England. The parliament of 1661, influenced by wicked statesmen and lawyers, left far behind the royalist commons of London; and rescinded as null the entire acts of 1641, on the absurd pretext that the late king had passed them through force. The Scots constitution fell back at once to a state little better than despotism. The lords of articles were revived, according to the same form of election as under Charles I. A few years afterward the duke of Lauderdale obtained the consent of parliament to an act, that whatever the king and council should order respecting all ecclesiastical matters, meetings, and persons, should have the force of law. A militia, or rather army, of 22,000 men, was established, to march wherever the council should appoint, and the honor and safety of the king require. Fines to the amount of £85,000, an enormous sum in that kingdom, were imposed on the covenanters. The earl of Argyle brought to the scaffold by an outrageous sentence, his son sentenced to lose his life on such a construction of the ancient law against leasing-making as no man engaged in political affairs could be sure to escape, the worst system of constitutional laws administered by the worst men, left no alternative but implicit obedience or desperate rebellion.

The presbyterian church, of course, fell by the act which annulled the parliament wherein it had been established. Episcopacy revived, but not as it had once existed in Scotland; the jurisdiction of the bishops became unlimited; the general assemblies, so dear to the people, were laid aside. The new prelates were odious as apostates, and soon gained a still more indelible title to popular hatred as persecutors. Three hundred and fifty of the presbyterian clergy (more than one-third of the whole number) were ejected from their benefices. Then began the preaching in conventicles, and the secession of the excited and exasperated multitude from the churches; and then ensued the ecclesiastical commission with its inquisitorial vigilance, its fines and corporal penalties, and the free quarters of the soldiery, with all that can be implied in that word. Then came the fruitless insurrection, and the fanatical assurance of success, and the certain discomfiture by a disciplined force, and the consternation of defeat, and the unbounded cruelties of the conqueror. And this went on with perpetual aggravation, or very rare

intervals, through the reign of Charles; the tyranny of Lauderdale far exceeding that of Middleton, as his own fell short of the duke of York's. No part, I believe, of modern history for so long a period, can be compared for the wickedness of government to the Scots administration of this reign. In proportion as the laws grew more rigorous against the presbyterian worship, its followers evinced more steadiness; driven from their conventicles, they resorted sometimes by night to the fields, the woods, the mountains; and, as the troops were continually employed to disperse them, they came with arms which they were often obliged to use; and thus the hour, the place, the circumstance, deepened every impression, and bound up their faith with indissoluble associations. The same causes produced a dark fanaticism, which believed the revenge of its own wrongs to be the execution of divine justice; and, as this acquired new strength by every successive aggravation of tyranny, it is literally possible that a continuance of the Stuart government might have led to something very like an extermination of the people in the western counties of Scotland.

The enormities of this detestable government are far too numerous, even in species, to be enumerated in this slight sketch; and of course most instances of cruelty have not been recorded. The privy council was accustomed to extort confessions by torture; that grim divan of bishops, lawyers, and peers sucking in the groans of each undaunted enthusiast, in hope that some imperfect avowal might lead to the sacrifice of other victims, or at least warrant the execution of the present. It is said that the duke of York, whose conduct in Scotland tends to efface those sentiments of pity and respect which other parts of his life might excite, used to assist himself on these occasions. One Mitchell, having been induced, by a promise that his life should be spared, to confess an attempt to assassinate Sharp the primate, was brought to trial some years afterward; when four lords of the council deposed on oath that no such assurance had been given him; and Sharp insisted upon his execution. The vengeance ultimately taken on this infamous apostate and persecutor, though doubtless in violation of what is justly reckoned a universal rule of morality, ought at least not to weaken our abhorrence of the man himself.

The test imposed by parliament in 1681 contained, among other things, an engagement never to attempt any alteration of government in church or state. The earl of Argyle, son of him who had perished by an unjust sentence, and himself

once before attainted by another, though at that time restored by the king, was still destined to illustrate the house of Campbell by a second martyrdom. He refused to subscribe the test without the reasonable explanation that he would not bind himself from attempting, in his station, any improvement in church or state. This exposed him to an accusation of leasing-making (the old mystery of iniquity in Scots law) and of treason. He was found guilty through the astonishing audacity of the crown lawyers, and servility of the judges and jury. It is not, perhaps, certain that his immediate execution would have ensued; but no man ever trusted securely to the mercies of the Stuarts, and Argyle escaped in disguise by the aid of his daughter-in-law. The council proposed that this lady should be publicly whipped; but there was an excess of atrocity in the Scots on the court side which no Englishman could reach, and the duke of York felt as a gentleman upon such a suggestion. The earl of Argyle was brought to the scaffold a few years afterward on this old sentence, but after his unfortunate rebellion, which of course would have legally justified his execution.

The Cameronians, a party rendered wild and fanatical through intolerable oppression, published a declaration, wherein, after renouncing their allegiance to Charles, and expressing their abhorrence of murder on the score of religion, they announced their determination of retaliating, according to their power, on such privy councilors, officers in command, or others, as should continue to seek their blood. The fate of Sharp was thus before the eyes of all who emulated his crimes; and in terror the council ordered, that whoever refused to disown this declaration on oath, should be put to death in the presence of two witnesses. Every officer, every soldier, was thus intrusted with the privilege of massacre; the unarmed, the women and children, fell indiscriminately by the sword: and besides the distinct testimonies that remain of atrocious cruelty, there exists in that kingdom a deep traditional horror, the record, as it were, of that confused mass of crime and misery which has left no other memorial.

§ 14. A parliament summoned by James on his accession, with an intimation from the throne that they were assembled not only to express their own duty, but to set an example of compliance to England, gave, without the least opposition, the required proofs of loyalty. They acknowledged the king's absolute power, declared their abhorrence of any principle derogatory to it, professed an unreserved obedience in

all cases, bestowed a large revenue for life. They enhanced the penalties against sectaries; a refusal to give evidence against traitors or other delinquents was made equivalent to a conviction of the same offense; it was capital to preach even in houses, or to hear preachers in the fields. The persecution raged with still greater fury in the first part of this reign. But the same repugnance of the episcopal party to the king's schemes for his own religion, which led to his remarkable change of policy in England, produced similar effects in Scotland. He had attempted to obtain from parliament a repeal of the penal laws and the test; but, though an extreme servility or a general intimidation made the nobility acquiesce in his propositions, and two of the bishops were gained over, yet the commissioners of shires and boroughs, who, voting promiscuously in the house, had, when united, a majority over the peers, so firmly resisted every encroachment to popery, that it was necessary to try other methods than those of parliamentary enactment. After the dissolution the dispensing power was brought into play; the privy council forbade the execution of the laws against the catholics; several of that religion were introduced to its board; the royal boroughs were deprived of their privileges, the king assuming the nomination of their chief magistrates, so as to throw the elections wholly into the hands of the crown. A declaration of indulgence, emanating from the king's absolute prerogative, relaxed the severity of the laws against presbyterian conventicles, and, annulling the oath of supremacy and the test of 1681, substituted for them an oath of allegiance acknowledging his power to be unlimited. He promised, at the same time, that "he would use no force nor invincible necessity against any man on account of his persuasion, or the protestant religion, nor would deprive the possessors of lands formerly belonging to the church." A very intelligible hint that the protestant religion was to exist only by this gracious sufferance.

§ 15. The oppressed presbyterians gained some respite by this indulgence, though instances of executions under the sanguinary statutes of the late reign are found as late as the beginning of 1688. But the memory of their sufferings was indelible; they accepted, but with no gratitude, the insidious mercy of a tyrant they abhorred. The Scots conspiracy with the prince of Orange went forward simultaneously with that of England; it included several of the council, from personal jealousy, dislike of the king's proceedings as to religion, or anxiety to secure an indemnity they had little deserved in

the approaching crisis. The people rose in different parts; the Scots nobility and gentry in London presented an address to the prince of Orange, requesting him to call a convention of the estates; and this irregular summons was universally obeyed.

The king was not without friends in this convention; but the whigs had from every cause a decided preponderance. England had led the way; William was on his throne; the royal government at home was wholly dissolved; and, after enumerating in fifteen articles the breaches committed on the constitution, the estates came to a resolution—"That James VII., being a professed papist, did assume the royal power, and acted as king, without ever taking the oath required by law, and had, by the advice of evil and wicked counselors, invaded the fundamental constitution of the kingdom, and altered it from a legal limited monarchy to an arbitrary despotic power, and hath exerted the same to the subversion of the protestant religion, and the violation of the laws and liberties of the kingdom, whereby he hath forfaulted (forfeited) his right to the crown, and the throne has become vacant." It was evident that the English vote of a constructive abdication, having been partly grounded on the king's flight, could not, without still greater violence, be applied to Scotland; and consequently the bolder denomination of forfeiture was necessarily employed to express the penalty of his misgovernment. There was, in fact, a very striking difference in the circumstances of the two kingdoms. In the one, there had been illegal acts and unjustifiable severities; but it was, at first sight, no very strong case for national resistance, which stood rather on a calculation of expediency than an instinct of self-preservation or an impulse of indignant revenge. But in the other it had been a tyranny, dark as that of the most barbarous ages; despotism, which in England was scarcely in blossom, had borne its bitter and poisonous fruits: no word of slighter import than forfeiture could be chosen to denote the national rejection of the Stuart line.

§ 16. A declaration and claim of rights was drawn up, as in England, together with the resolution that the crown be tendered to William and Mary, and descend afterward in conformity with the limitations enacted in the sister kingdom. This declaration excluded papists from the throne, and asserted the illegality of proclamations to dispense with statutes, of the inflicting capital punishment without jury, of imprisonment without special cause or delay of trial, of exacting enormous fines, of nominating the magistrates in bor-

oughs, and several other violent proceedings in the last two reigns. These articles the convention challenged as their undoubted right, against which no declaration or precedent ought to operate. They reserved some other important grievances to be redressed in parliament. Upon this occasion a noble fire of liberty shone forth to the honor of Scotland, amidst those scenes of turbulent faction or servile corruption which the annals of her parliament so perpetually display. They seemed emulous of English freedom, and proud to place their own imperfect commonwealth on as firm a basis.

One great alteration in the state of Scotland was almost necessarily involved in the fall of the Stuarts. Their most conspicuous object had been the maintenance of the episcopal church; the line was drawn far more closely than in England; in that church were the court's friends, out of it were its opponents. Above all, the people were out of it, and in a revolution brought about by the people their voice could not be slighted. It was one of the articles, accordingly, in the declaration of rights, that prelacy and precedence in ecclesiastical office were repugnant to the genius of a nation reformed by presbyters, and an unsupportable grievance which ought to be abolished. William, there is reason to believe, had offered to preserve the bishops, in return for their support in the convention. But this, not more happily for Scotland than for himself and his successors, they refused to give. No compromise, or even acknowledged toleration, was practicable in that country between two exasperated factions; but if oppression was necessary, it was at least not on the majority that it ought to fall. But besides this, there was as clear a case of forfeiture in the Scots episcopal church as in the royal family of Stuart. For this institution houses had been burned and fields laid waste, and the Gospel had been preached in wildernesses, and its ministers had been shot in their prayers, and husbands had been murdered before their wives, and virgins had been defiled, and many had died by the executioner, and by massacre, and in imprisonment, and in exile and slavery, and women had been tied to stakes on the sea-shore till the tide rose to overflow them, and some had been tortured and mutilated; it was a religion of the boots and the thumb-screw, which a good man must be very cool-blooded indeed if he did not hate and reject from the hands which offered it. For, after all, it is much more certain that the Supreme Being abhors cruelty and persecution, than that he has set up bishops to have a superiority over presbyters.

The convention of estates was turned by an act of its own into a parliament, and continued to sit during the king's reign. Many excellent statutes were enacted in this parliament, besides the provisions included in the declaration of rights; twenty-six members were added to the representation of the counties, the tyrannous acts of the last two reigns were repealed, the unjust attainders were reversed, the lords of articles were abolished. After some years an act was obtained against wrongous imprisonment, still more effectual, perhaps, in some respects than that of the habeas corpus in England. The prisoner is to be released on bail within twenty-four hours on application to a judge, unless committed on a capital charge, and in that case must be brought to trial within sixty days. A judge refusing to give full effect to the act is declared incapable of public trust.

Notwithstanding these great improvements in the constitution, and the cessation of religious tyranny, the Scots are not accustomed to look back on the reign of William with much complacency. The regeneration was far from perfect; the court of session continued to be corrupt and partial; severe and illegal proceedings might sometimes be imputed to the council; and in one lamentable instance, the massacre of the Macdonalds in Glencoe, the deliberate crime of some statesmen tarnished not slightly the bright fame of their deceived master. The episcopal clergy, driven out injuriously by the populace from their livings, were permitted after a certain time to hold them again, in some instances, under certain conditions; but William, perhaps almost the only consistent friend of toleration in his kingdoms, at least among public men, lost by this indulgence the affection of one party, without in the slightest degree conciliating the other. The true cause, however, of the prevalent disaffection at this period was the condition of Scotland, an ancient, independent kingdom, inhabited by a proud, high-spirited people, relatively to another kingdom which they had long regarded with enmity, still with jealousy, but to which, in despite of their theoretical equality, they were kept in subordination by an insurmountable necessity. The union of the two crowns had withdrawn their sovereign and his court; yet their government had been national, and, on the whole, with no great intermixture of English influence. Many reasons, however, might be given for a more complete incorporation, which had been the favorite project of James I., and was discussed, at least on the part of Scotland, by commissioners appointed in 1670. That treaty failed of

making any progress — the terms proposed being such as the English parliament would never have accepted. At the Revolution a similar plan was just hinted and abandoned. Meanwhile, the new character that the English government had assumed rendered it more difficult to preserve the actual connection. A king of both countries, especially by origin more allied to the weaker, might maintain some impartiality in his behavior toward each of them. But if they were to be ruled, in effect, nearly as two republics; that is, if the power of their parliaments should be so much enhanced as ultimately to determine the principal measures of state (which was at least the case in England), no one who saw their mutual jealousy, rising on one side to the highest exasperation, could fail to anticipate that some great revolution must be at hand, and that a union, neither federal nor legislative, but possessing every inconvenience of both, could not long be endured. The well-known business of the Darien company must have undeceived every rational man who dreamed of any alternative but incorporation or separation. The Scots parliament took care to bring on the crisis by the act of security in 1704. It was enacted that, on the queen's death without issue, the estates should meet to name a successor of the royal line, and a protestant; but that this should not be the same person who would succeed to the crown of England, unless during her majesty's reign conditions should be established to secure from English influence the honor and independence of the kingdom, the authority of parliament, the religion, trade, and liberty of the nation. This was explained to mean a free intercourse with the plantations, and the benefits of the navigation act. The prerogative of declaring peace and war was to be subjected forever to the approbation of parliament, lest at any future time these conditions should be revoked.

§ 17. Those who obtained the act of security were partly of the Jacobite faction, who saw in it the hope of restoring at least Scotland to the banished heir—partly of a very different description, whigs in principle and determined enemies of the pretender, but attached to their country, jealous of the English court, and determined to settle a legislative union on such terms as became an independent state. Such a union was now seen in England to be indispensable; the treaty was soon afterward begun, and, after a long discussion of the terms between the commissioners of both kingdoms, the incorporation took effect on the 1st of May, 1707. It is provided by the articles of this treaty, confirmed by the parlia-

ments, that the succession of the united kingdom shall remain to the princess Sophia, and the heirs of her body, being protestants; that all privileges of trade shall belong equally to both nations; that there shall be one great seal, and the same coin, weights, and measures; that the episcopal and presbyterian churches of England and Scotland shall be forever established as essential and fundamental parts of the union; that the united kingdom shall be represented by one and the same parliament, to be called the parliament of Great Britain; that the number of peers for Scotland shall be sixteen, to be elected for every parliament by the whole body, and the number of representatives of the commons forty-five, two-thirds of whom to be chosen by the counties, and one-third by the boroughs; that the crown be restrained from creating any new peers of Scotland; that both parts of the united kingdom shall be subject to the same duties of excise, and the same customs on export and import; but that, when England raises two millions by a land-tax, £48,000 shall be raised in Scotland, and in like proportion.

It has not been unusual for Scotsmen, even in modern times, while they can not but acknowledge the expediency of a union, and the blessings which they have reaped from it, to speak of its conditions as less favorable than their ancestors ought to have claimed. For this, however, there does not seem much reason. The ratio of population would, indeed, have given Scotland about one-eighth of the legislative body, instead of something less than one-twelfth; but no government, except the merest democracy, is settled on the sole basis of numbers; and if the comparison of wealth and of public contributions was to be admitted, it may be thought that a country which stipulated for itself to pay less than one-fortieth of direct taxation was not entitled to a much greater share of the representation than it obtained. Combining the two ratios of population and property, there seems little objection to this part of the union; and in general it may be observed, of the articles of that treaty, what often occurs with compacts intended to oblige future ages, that they have rather tended to throw obstacles in the way of reformations for the substantial benefit of Scotland than to protect her against encroachment and usurpation.

This, however, could not be securely anticipated in the reign of Anne; and, no doubt, the measure was an experiment of such hazard, that every lover of his country must have consented in trembling, or revolted from it with disgust. No past experience of history was favorable to the absorption

of a lesser state (at least where the government partook so much of the republican form) in one of superior power and ancient rivalry. The representation of Scotland in the united legislature was too feeble to give any thing like security against the English prejudices and animosities, if they should continue or revive. The church was exposed to the most apparent perils, brought thus within the power of a legislature so frequently influenced by one which held her not as a sister, but rather as a bastard usurper of a sister's inheritance; and, though her permanence was guaranteed by the treaty, yet it was hard to say how far the legal competence of parliament might hereafter be deemed to extend, or at least, how far she might be abridged of her privileges and impaired in her dignity. If very few of these mischiefs have resulted from the union, it has doubtless been owing to the prudence of our government, and chiefly to the general sense of right and the diminution both of national and religious bigotry during the last century. But it is always to be kept in mind, as the best justification of those who came into so great a sacrifice of natural patriotism, that they gave up no excellent form of polity; that the Scots constitution had never produced the people's happiness; that their parliament was bad in its composition, and in practice little else than a factious and venal aristocracy; that they had before them the alternatives of their present condition, with the prospect of unceasing discontent, half suppressed by unceasing corruption, or of a more honorable but very precarious separation of the two kingdoms, the renewal of national wars and border feuds, at a cost the poorer of the two could never endure, and at a hazard of ultimate conquest, which, with all her pride and bravery, the experience of the last generation had shown to be no impossible term of the contest.

The union closes the story of the Scots constitution. From its own nature not more than from the gross prostitution with which a majority had sold themselves to the surrender of their own legislative existence, it was long odious to both parties in Scotland. An attempt to dissolve it by the authority of the united parliament itself was made in a very few years, and not very decently supported by the whigs against the queen's last ministry. But, after the accession of the house of Hanover, the Jacobite party displayed such strength in Scotland, that to maintain the union was evidently indispensable for the reigning family. That party comprised a large proportion of the superior classes, and nearly the whole of the episcopal church, which, though fallen, was for some

years considerable in numbers. The national prejudices ran in favor of their ancient stock of kings, conspiring with the sentiment of dishonor attached to the union itself, and jealousy of some innovations which a legislature they were unwilling to recognize thought fit to introduce. It is certain that Jacobitism, in England little more, after the reign of George I., than an empty word, the vehicle of indefinite dissatisfaction in those who were never ready to encounter peril or sacrifice advantage for its affected principle, subsisted in Scotland as a vivid emotion of loyalty, a generous promptitude to act or suffer in its cause; and, even when all hope was extinct, clung to the recollections of the past long after the very name was only known by tradition, and every feeling connected with it had been wholly effaced to the south of the Tweed. It is believed that some persons in that country kept up an intercourse with Charles Edward as their sovereign till his decease in 1787. They had given, forty years before, abundant testimonies of their activity to serve him. That rebellion is, in more respects than one, disgraceful to the British government; but it furnished an opportunity for a wise measure to prevent its recurrence, and to break down in some degree the aristocratical ascendency, by abolishing the hereditary jurisdictions which, according to the genius of the feudal system, were exercised by territorial proprietors under royal charter or prescription.

CHAPTER XVIII.

ON THE CONSTITUTION OF IRELAND.

§ 1. Ancient State of Ireland. § 2. Its Kingdoms and Chieftainships. § 3. Law of Tanistry and Gavel-kind. § 4. Rude State of Society. § 5. Invasion of Henry II. Acquisitions of English Barons. § 6. Forms of English Constitution established. § 7. Exclusion of native Irish from them. § 8. Degeneracy of English Settlers. § 9. Parliament of Ireland. § 10. Disorderly State of the Island. The Irish regain Part of their Territories. § 11. English Law confined to the Pale. § 12. Poyning's Law. § 13. Royal Authority revives under Henry VIII. § 14. Resistance of Irish to Act of Supremacy. § 15. Protestant Church established by Elizabeth. § 16. Effects of this Measure. § 17. Rebellions of her Reign. § 18. Opposition in Parliament. § 19. Arbitrary Proceedings of Sir Henry Sidney. § 20. James I. Laws against Catholics enforced. § 21. English Law established throughout Ireland. § 22. Settlements of English in Munster, Ulster, and other Parts. § 23. Injustice attending them. § 24. Constitution of Irish Parliament. § 25. Charles I. promises Graces to the Irish. Does not confirm them. § 26. Administration of Strafford. § 27. Rebellion of 1641. Subjugation of Irish by Cromwell. § 28. Restoration of Charles II. § 29. Act of Settlement. § 30. Hopes of Catholics under Charles and James. § 31. War of 1689, and final Reduction of Ireland. Penal Laws against Catholics. § 32. Dependence of Irish on English Parliament. § 33. Growth of a patriotic Party in 1753.

§ 1. THE antiquities of Irish history, imperfectly recorded, and rendered more obscure by controversy, seem hardly to belong to our present subject. But the political order or state of society among that people at the period of Henry II.'s invasion must be distinctly apprehended and kept in mind before we can pass a judgment upon, or even understand, the course of succeeding events, and the policy of the English government in relation to that island.

It can hardly be necessary to mention that the Irish are descended from one of those Celtic tribes which occupied Gaul and Britain some centuries before the Christian era. Their language, however, is so far dissimilar from that spoken in Wales, though evidently of the same root, as to render it probable that the emigration, whether from this island or from Armorica, was in a remote age; while its close resemblance to that of the Scottish Highlanders, which hardly can be called another dialect, as unequivocally demonstrates a nearer affinity of the two nations. It seems to be generally believed that the Irish are the parent tribe, and planted their colony in Scotland since the commencement of our era.

About the end of the eighth century some of those swarms of Scandinavian descent which were poured out in such unceasing and irresistible multitudes on France and Britain be-

gan to settle on the coasts of Ireland. These colonists were known by the name of Ostmen, or men from the east, as in France they were called Normans from their northern origin. They occupied the sea-coast from Antrim easterly round to Limerick; and by them the principal cities of Ireland were built. They waged war for some time against the aboriginal Irish in the interior; but, though better acquainted with the arts of civilized life, their inferiority in numbers caused them to fail at length in this contention; and the piratical invasions from their brethren in Norway becoming less frequent in the eleventh and twelfth centuries, they had fallen into a state of dependence on the native princes.

§ 2. The island was divided into five principal kingdoms, Leinster, Munster, Ulster, Connaught, and Meath; one of whose sovereigns was chosen king of Ireland in some general meeting, probably of the nobility or smaller chieftains and of the prelates. But there seems to be no clear tradition as to the character of this national assembly, though some maintain it to have been triennially held. The monarch of the island had tributes from the inferior kings, and a certain supremacy, especially in the defense of the country against invasion; but the constitution was of a federal nature, and each was independent in ruling his people, or in making war on his neighbors. Below the kings were the chieftains of different septs or families, perhaps in one or two degrees of subordination, bearing a relation which may be loosely called feudal, to each other and to the crown.

§ 3. These chieftainships, and perhaps even the kingdoms themselves, though not partible, followed a very different rule of succession from that of primogeniture. They were subject to the law of tanistry, of which the principle is defined to be that the demesne lands and dignity of chieftainship descended to the eldest, and most worthy of the same blood; these epithets not being used, we may suppose, synonymously, but in order to indicate that the preference given to seniority was to be controlled by a due regard to desert. No better mode, it is evident, of providing for a perpetual supply of those civil quarrels in which the Irish are supposed to place so much of their enjoyment could have been devised. Yet, as these grew sometimes a little too frequent, it was not unusual to elect a tanist, or reversionary successor, in the lifetime of the reigning chief, as has been the practice of more civilized nations. An infant was never allowed to hold the sceptre of an Irish kingdom, but was necessarily postponed to his uncle or other kinsman of mature age; as was the case

also in England, even after the consolidation of the Anglo-Saxon monarchy.

The land-owners, who did not belong to the noble class, bore the same name as their chieftain, and were presumed to be of the same lineage. But they held their estates by a very different and an extraordinary tenure, that of Irish gavel-kind. On the decease of a proprietor, instead of an equal partition among his children, as in the gavel-kind of English law, the chief of the sept, according to the generally received explanation, made, or was entitled to make, a fresh division of all the lands within his district; allotting to the heirs of the deceased a portion of the integral territory along with the other members of the tribe. It seems impossible to conceive that these partitions were renewed on every death of one of the sept. But they are asserted to have at least taken place so frequently as to produce a continual change of possession. The policy of this custom doubtless sprung from too jealous a solicitude as to the excessive inequality of wealth, and from the habit of looking on the tribe as one family of occupants, not wholly divested of its original right by the necessary allotment of lands to particular cultivators. It bore some degree of analogy to the institution of the year of jubilee in the Mosaic code; and, what may be thought more immediate, was almost exactly similar to the rule of succession which is laid down in the ancient laws of Wales.

§ 4. In the territories of each sept, judges called Brehons, and taken out of certain families, sat with primeval simplicity upon turfen benches in some conspicuous situation, to determine controversies. Their usages are almost wholly unknown; for what have been published as fragments of the Brehon law seem open to great suspicion of having at least been interpolated. It is notorious that, according to the custom of many states in the infancy of civilization, the Irish admitted the composition or fine for murder, instead of capital punishment; and this was divided, as in other countries, between the kindred of the slain and the judge.

In the twelfth century it is evident that the Irish nation had made far less progress in the road of improvement than any other of Europe in circumstances of climate and position so little unfavorable. They had no arts that deserve the name, nor any commerce, their best line of sea-coast being occupied by the Norwegians. They had no fortified towns, nor any houses or castles of stone, the first having been erected at Tuam a very few years before the invasion of Henry. Their conversion to Christianity, indeed, and the

multitude of cathedral and conventual churches erected throughout the island, had been the cause, and probably the sole cause, of the rise of some cities or villages with that name, such as Armagh, Cashel, and Trim. But neither the chiefs nor the people loved to be confined within their precincts, and chose rather to dwell in scattered cabins amidst the free solitude of bogs and mountains. As we might expect, their qualities were such as belong to man by his original nature, and which he displays in all parts of the globe where the state of society is inartificial: they were gay, generous, hospitable, ardent in attachment and hate, credulous of falsehood, prone to anger and violence, generally crafty and cruel. With these very general attributes of a barbarous people, the Irish character was distinguished by a peculiar vivacity of imagination, an enthusiasm and impetuosity of passion, and a more than ordinary bias toward a submissive and superstitious spirit in religion.

This spirit may justly be traced, in a great measure, to the virtues and piety of the early preachers of the Gospel in that country. Their influence, though at this remote age, and with our imperfect knowledge, it may hardly be distinguishable amidst the licentiousness and ferocity of a rude people, was necessarily directed to counteract those vices, and can not have failed to mitigate and compensate their evil. In the seventh and eighth centuries, while a total ignorance seemed to overspread the face of Europe, the monasteries and schools of Ireland preserved in the best manner they could such learning as had survived the revolutions of the Roman world. But the learning of monasteries had never much efficacy in dispelling the ignorance of the laity; and, indeed, even in them it had decayed long before the twelfth century. The clergy were respected and numerous, the bishops alone amounting at one time to no less than three hundred; and it has been maintained by our most learned writers that they were wholly independent of the see of Rome till, a little before the English invasion, one of their primates thought fit to solicit the pall from thence on his consecration, according to the discipline long practiced in other western churches.

It will be readily perceived that the government of Ireland must have been almost entirely aristocratical, and, though not strictly feudal, not very unlike that of the feudal confederacies in France during the ninth and tenth centuries. It was, perhaps, still more oppressive. The ancient condition of the common people of Ireland was very little

different from slavery. Unless we believe this condition to have been greatly deteriorated under the rule of their native chieftains after the English settlement, for which there seems no good reason, we must give little credit to the fanciful pictures of prosperity and happiness in that period of aboriginal independence which the Irish, in their discontent with later times, have been apt to draw. They had, no doubt, like all other nations, good and wise princes, as well as tyrants and usurpers. But we find by their annals that, out of two hundred ancient kings, of whom some brief memorials are recorded, not more than thirty came to a natural death; while, for the later period, the oppression of the Irish chieftains, and of those degenerate English who trod in their steps and emulated the vices they should have restrained, is the one constant theme of history. Their exactions kept the peasants in hopeless poverty, their tyranny in perpetual fear. The chief claimed a right of taking from his tenants provisions for his own use at discretion, or of sojourning in their houses. This was called coshery, and is somewhat analogous to the royal prerogative of purveyance. A still more terrible oppression was the quartering of the lords' soldiers on the people, sometimes mitigated by a composition, called by the Irish bonaght. For the perpetual warfare of these petty chieftains had given rise to the employment of mercenary troops, partly natives, partly from Scotland, known by the uncouth names of Kerns and Gallowglasses, who proved the scourge of Ireland down to its final subjugation by Elizabeth.

§ 5. The reduction of Ireland, at least in name, under the dominion of Henry II., was not achieved by his own efforts. He had little share in it beyond receiving the homage of Irish princes, and granting charters to his English nobility. Strongbow, Lacy, Fitz-Stephen, were the real conquerors, through whom alone any portion of Irish territory was gained by arms or treaty; and as they began the enterprise without the king, they carried it on also for themselves, deeming their swords a better security than his charters. This ought to be kept in mind, as revealing the secret of the English government over Ireland, and furnishing a justification for what has the appearance of a negligent abandonment of its authority. The few barons and other adventurers, who, by dint of forces hired by themselves, and, in some instances, by conventions with the Irish, settled their armed colonies in the island, thought they had done much for Henry II. in causing his name to be acknowledged, his administration to be estab-

lished in Dublin, and in holding their lands by his grant. They claimed in their turn, according to the practice of all nations and the principles of equity, that those who had borne the heat of the battle should enjoy the spoil without molestation. Hence the enormous grants of Henry and his successors, though so often censured for impolicy, were probably what they could not have retained in their own hands; and, though not, perhaps, absolutely stipulated as the price of titular sovereignty, were something very like it. But what is to be censured, and what at all hazards they were bound to refuse, was the violation of their faith to the Irish princes, in sharing among these insatiable barons their ancient territories; which, setting aside the wrong of the first invasion, were protected by their homage and submission, and sometimes by positive conventions. The whole island, in fact, with the exception of the county of Dublin and the maritime towns, was divided, before the end of the thirteenth century, and most of it in the twelfth, among ten English families: earl Strongbow, who had some color of hereditary title, according to our notions of law, by his marriage with the daughter of Dermot, king of Leinster, obtaining a grant of that province; Lacy acquiring Meath, which was not reckoned a part of Leinster, in the same manner; the whole of Ulster being given to De Courcy; the whole of Connaught to De Burgh; and the rest to six others. These, it must be understood, they were to hold in a sort of feudal suzerainty, parceling them among their tenants of English race, and expelling the natives, or driving them into the worst parts of the country by an incessant warfare.

§ 6. The Irish chieftains, though compelled to show some exterior signs of submission to Henry, never thought of renouncing their own authority, or the customs of their forefathers; nor did he pretend to interfere with the government of their septs, content with their promise of homage and tribute, neither of which were afterward paid. But in those parts of Ireland which he reckoned his own, it was his aim to establish the English laws, to render the lesser island, as it were, a counterpart in all its civil constitution, and mirror of the greater. The colony from England was already not inconsiderable, and likely to increase; the Ostmen, who inhabited the maritime towns, came very willingly, as all settlers of Teutonic origin have done, into the English customs and language; and upon this basis, leaving the accession of the aboriginal people to future contingencies, he raised the edifice of the Irish constitution. He gave charters of privilege to the

chief towns, began a division into counties, appointed sheriffs and judges of assize to administer justice, erected supreme courts at Dublin, and perhaps assembled parliaments. His successors pursued the same course of policy; the great charter of liberties, as soon as granted by John at Runnymede, was sent over to Ireland; and the whole common law, with all its forms of process, and every privilege it was deemed to convey, became the birthright of the Anglo-Irish colonists.

These had now spread over a considerable part of the island. Twelve counties appear to have been established by John, comprehending most of Leinster and Munster; while the two ambitious families of Courcy and De Burgh encroached more and more on the natives in the other provinces.[1] But the same necessity, which gratitude for the services or sense of the power of the great families had engendered, for rewarding them by excessive grants of territory, led to other concessions that rendered them almost independent of the monarchy. The franchise of a county palatine gave a right of exclusive civil and criminal jurisdiction; so that the king's writ should not run, nor his judges come within it, though judgment in its courts might be reversed by writ of error in the king's bench. The lord might enfeoff tenants to hold by knight's service of himself; he had almost all regalian rights; the lands of those attainted for treason escheated to him; he acted in every thing rather as one of the great feudatories of France or Germany than a subject of the English crown. Such had been the earl of Chester, and only Chester, in England; but in Ireland this dangerous independence was permitted to Strongbow in Leinster, to Lacy in Meath, and at a later time to the Butlers and Geraldines in part of Munster. Strongbow's vast inheritance soon fell to five sisters, who took to their shares, with the same palatine rights, the counties of Carlow, Wexford, Kilkenny, Kildare, and the district of Leix, since called the Queen's County.[2] In all these palatinates, forming by far the greater portion of the English

[1] These counties are Dublin, Kildare, Meath (including Westmeath), Louth, Carlow, Wexford, Kilkenny, Waterford, Cork, Tipperary, Kerry, and Limerick. In the reign of Edward I. we find sheriffs also of Connaught and Roscommon. Thus, except the northern province, and some of the central districts, all Ireland was shire-ground, and subject to the crown in the thirteenth century, however it might fall away in the next two. Those who write confusedly about this subject pretend that the authority of the king at no time extended beyond the pale; whereas that name was not known, I believe, till the fifteenth century. Under the great earl of Pembroke, who died in 1219, the whole island was perhaps nearly as much reduced under obedience as in the reign of Elizabeth.

[2] William Marischal, earl of Pembroke, who married the daughter of earl Strongbow, left five sons and five daughters; the first all died without issue.

territories, the king's process had its course only within the lands belonging to the church. The English aristocracy of Ireland, in the thirteenth and fourteenth centuries, bears a much closer analogy to that of France in rather an earlier period than any thing which the history of this island can show.

§ 7. Pressed by the inroads of these barons, and despoiled frequently of lands secured to them by grant or treaty, the native chiefs had recourse to the throne for protection, and would in all likelihood have submitted without repining to a sovereign who could have afforded it. But John and Henry III., in whose reigns the independence of the aristocracy was almost complete, though insisting by writs and proclamations on a due observance of the laws, could do little more for their new subjects, who found a better chance of redress in standing on their own defense. The powerful septs of the north enjoyed their liberty. But those of Munster and Leinster, intermixed with the English, and encroached upon from every side, were the victims of constant injustice, and, abandoning the open country for bog and mountain pasture, grew more poor and barbarous in the midst of the general advance of Europe. Many remained under the yoke of English lords, and in a worse state than that of villanage, because still less protected by the tribunals of justice. The Irish had originally stipulated with Henry II. for the use of their own laws. They were consequently held beyond the pale of English justice, and regarded as aliens at the best, sometimes as enemies, in our courts. Thus, as by the Brehon customs murder was only punished by a fine, it was not held felony to kill one of Irish race, unless he had conformed to the English law. Five septs, to which the royal families of Ireland belonged, the names of O'Neal, O'Connor, O'Brien, O'Malachlin, and Mac Murrough, had the special immunity of being within the protection of our law, and it was felony to kill one of them. I do not know by what means they obtained this privilege; for some of these were certainly as far from the king's obedience as any in Ireland. But besides these a vast number of charters of denization were granted to particular persons of Irish descent from the reign of Henry II. downward, which gave them and their posterity the full birthrights of English subjects; nor does there seem to have been any difficulty in procuring these. It can not be said, therefore, that the English government, or those who represented it in Dublin, displayed any reluctance to emancipate the Irish from thralldom. Whatever obstruction

might be interposed to this was from that assembly whose concurrence was necessary to every general measure, the Anglo-Irish parliament. Thus, in 1278, we find the first instance of an application from the community of Ireland, as it is termed, but probably from some small number of septs dwelling among the colony, that they might be admitted to live by the English law, and offering 8000 marks for this favor. The letter of Edward I. to the justiciary of Ireland on this is sufficiently characteristic both of his wisdom and his rapaciousness. He is satisfied of the expediency of granting the request, provided it can be done with the general consent of the prelates and nobles of Ireland; and directs the justiciary, if he can obtain that concurrence, to agree with the petitioners for the highest fine he can obtain, and for a body of good and stout soldiers. But this necessary consent of the aristocracy was withheld. Excuses were made to evade the king's desire. It was wholly incompatible with their systematic encroachments on their Irish neighbors to give them the safeguard of the king's writ for their possessions. The Irish renewed their supplication more than once, both to Edward I. and Edward III.; they found the same readiness in the English court; they sunk at home through the same unconquerable oligarchy. It is not to be imagined that the entire Irishry partook in this desire of renouncing their ancient customs. Besides the prejudices of nationality, there was a strong inducement to preserve the Brehon laws of tanistry, which suited better a warlike tribe than the hereditary succession of England. But it was the unequivocal duty of the legislature to avail itself of every token of voluntary submission; which, though beginning only with the subject septs of Leinster, would gradually incorporate the whole nation in a common band of co-equal privileges with their conquerors.

§ 8. Meanwhile, these conquerors were themselves brought under a moral captivity of the most disgraceful nature; and, not as the rough soldier of Rome is said to have been subdued by the art and learning of Greece, the Anglo-Norman barons, that had wrested Ireland from the native possessors, fell into their barbarous usages, and emulated the vices of the vanquished. This degeneracy of the English settlers began very soon, and continued to increase for several ages. They intermarried with the Irish; they connected themselves with them by the national custom of fostering, which formed an artificial relationship of the strictest nature; they spoke the Irish language; they affected the Irish dress and manner of wearing the hair; they even adopted, in some in-

stances, Irish surnames; they harassed their tenants with every Irish exaction and tyranny; they administered Irish law, if any at all; they became chieftains rather than peers; and neither regarded the king's summons to his parliaments, nor paid any obedience to his judges. Thus the great family of De Burgh or Burke, in Connaught, fell off almost entirely from subjection; nor was that of the earls of Desmond, a younger branch of the house of Geraldine or Fitzgerald, much less independent of the crown; though by the title it enjoyed, and the palatine franchises granted to it by Edward III. over the counties of Limerick and Kerry, it seemed to keep up more show of English allegiance.

§ 9. The regular constitution of Ireland was, as I have said, as nearly as possible a counterpart of that established in this country. The administration was vested in an English justiciary or lord deputy, assisted by a council of judges and principal officers, mixed with some prelates and barons, but subordinate to that of England, wherein sat the immediate advisers of the sovereign. The courts of chancery, king's bench, common pleas, and exchequer, were the same in both countries; but writs of error lay from judgments given in the second of these to the same court in England. For all momentous purposes, as to grant a subsidy, or enact a statute, it was as necessary to summon a parliament in the one island as in the other. An Irish parliament originally, like an English one, was but a more numerous council, to which the more distant as well as the neighboring barons were summoned, whose consent, though dispensed with in ordinary acts of state, was both the pledge and the condition of their obedience to legislative provisions. Not long after 1295, the sheriff of each county and liberty is directed to return two knights to a parliament held by Wogan, an active and able deputy. The date of the admission of burgesses can not be fixed with precision; but it was probably not earlier than the reign of Edward III. They appear in 1341; and the earl of Desmond summoned many deputies from corporations to his rebel convention held at Kilkenny in the next year. The commons are mentioned as an essential part of parliament in an ordinance of 1359; before which time, in the opinion of lord Coke, "the conventions in Ireland were not so much parliaments as assemblies of great men." This, as appears, is not strictly correct; but in substance they were perhaps little else long afterward.

The earliest statutes on record are of the year 1310; and

from that year they are lost till 1429, though we know many parliaments to have been held in the mean time, and are acquainted by other means with their provisions. Those of 1310 bear witness to the degeneracy of the English lords, and to the laudable zeal of a feeble government for the reformation of their abuses. They begin with an act to restrain great lords from taking of prizes, lodging, and sojourning with the people of the country against their will. The statute proceeds to restrain great lords or others, except such as have royal franchises, from giving protections, which they used to compel the people to purchase; and directs that there shall be commissions of assize and jail delivery through all the countries of Ireland.

These regulations exhibit a picture of Irish miseries. The barbarous practices of coshering and bonaght, the latter of which was generally known in later times by the name of coyne and livery, had been borrowed from those native chieftains whom our modern Hibernians sometimes hold forth as the paternal benefactors of their country. It was the crime of the Geraldines and the De Courcys to have retrograded from the comparative humanity and justice of England, not to have deprived the people of freedom and happiness they had never known. These degenerate English, an epithet by which they are always distinguished, paid no regard to the statutes of a parliament which they had disdained to attend, and which could not render itself feared. We find many similar laws in the fifteenth century, after the interval which I have noticed in the printed records. And in the intervening period, a parliament held by Lionel, duke of Clarence, second son of Edward III., at Kilkenny, in 1367, the most numerous assembly that had ever met in Ireland, was prevailed upon to pass a very severe statute against the insubordinate and degenerate colonists. It recites that the English of the realm of Ireland were become mere Irish in their language, names, apparel, and manner of living, that they had rejected the English laws, and allied themselves by intermarriage with the Irish. It prohibits under the penalties of high treason, or at least of forfeiture of lands, all these approximations to the native inhabitants, as well as the connections of fostering and gossipred. The English are restrained from permitting the Irish to graze their lands, from presenting them to benefices, or receiving them into religious houses, and from entertaining their bards. On the other hand, they are forbidden to make war upon their Irish neighbors without the authority of the state. And, to enforce better these

provisions, the king's sheriffs are empowered to enter all franchises for the apprehension of felons or traitors.[3]

§ 10. This statute, like all others passed in Ireland, so far from pretending to bind the Irish, regarded them not only as out of the king's allegiance, but as perpetually hostile to his government. They were generally denominated the Irish enemy. This, doubtless, was not according to the policy of Henry II., nor of the English government a considerable time after his reign. Nor can it be said to be the fact, though from some confusion of times the assertion is often made, that the island was not subject, in a general sense, to that prince and to the three next kings of England. The English were settled in every province; an imperfect division of counties and administration of justice subsisted; and even the Irish chieftains, though ruling their septs by the Brehon law, do not appear in that period to have refused the acknowledgment of the king's sovereignty. But, compelled to defend their lands against perpetual aggression, they justly renounced all allegiance to a government which could not redeem the original wrong of its usurpation by the benefits of protection. They became gradually stronger; they regained part of their lost territories; and after the era of 1315, when Edward Bruce invaded the kingdom with a Scots army, and, though ultimately defeated, threw the government into a disorder from which it never recovered, their progress was so rapid that in the space of thirty or forty years the northern provinces, and even part of the southern, were entirely lost to the crown of England.

It is unnecessary, in so brief a sketch, to follow the unprofitable annals of Ireland in the fourteenth and fifteenth centuries. Amidst the usual variations of war, the English interests were continually losing ground. Once only Richard II. appeared with a very powerful army, and the princes of Ireland crowded round his throne to offer homage. But, upon his leaving the kingdom, they returned of course to their former independence and hostility. The long civil wars of England in the next century consummated the ruin of its power over the sister island. The Irish possessed all Ulster, and shared Connaught with the degenerate Burkes. The sept of O'Brien held their own district of Thomond, now the county

[3] The statute of Kilkenny restored the English government for a while. About this time Edward III. endeavored to supersede the domestic legislature by causing the Anglo-Irish to attend his parliament at Westminster; and succeeded so far that, in 1375, not only prelates and peers, but proctors of the clergy, knights, and even burgesses from nine towns, actually sat there. But this was too much against the temper of the Irish to be repeated.

of Clare. A considerable part of Leinster was occupied by other independent tribes; while in the south, the earls of Desmond, lords either by property or territorial jurisdiction of the counties of Kerry and Limerick, and in some measure those of Cork and Waterford, united the turbulence of English barons with the savage manners of Irish chieftains; ready to assume either character as best suited their rapacity and ambition; reckless of the king's laws or his commands, but not venturing, nor, upon the whole, probably, wishing to cast off the name of his subjects. The elder branch of their house, the earls of Kildare, and another illustrious family, the Butlers, earls of Ormond, were apparently more steady in their obedience to the crown; yet, in the great franchises of the latter, comprising the counties of Kilkenny and Tipperary, the king's writ had no course; nor did he exercise any civil or military authority but by the permission of this mighty peer.

§ 11. Thus, in the reign of Henry VII., when the English authority over Ireland had reached its lowest point, it was, with the exception of a very few sea-ports, to all intents confined to the four counties of the English pale—a name not older, perhaps, than the preceding century—those of Dublin, Louth, Kildare, and Meath, the latter of which, at that time, included Westmeath. But even in these there were extensive marches, or frontier districts, the inhabitants of which were hardly distinguishable from the Irish, and paid them a tribute called black-rent; so that the real supremacy of the English laws was not probably established beyond the first two of these counties, from Dublin to Dundalk on the coast, and for about thirty miles inland. From this time, however, we are to date its gradual recovery. The more steady counsels and firmer prerogative of the Tudor kings left little chance of escape from their authority, either for rebellious peers of English race, or the barbarous chieftains of Ireland.

I must pause at this place to observe that we shall hardly find in the foregoing sketch of Irish history, during the period of the Plantagenet dynasty (nor am I conscious of having concealed any thing essential), that systematic oppression and misrule which is every day imputed to the English nation and its government. The policy of our kings appears to have generally been wise and beneficent; but it is duly to be remembered that those very limitations of their prerogative which constitute liberty must occasionally obstruct the execution of the best purposes, and that the co-ordinate powers of parliament, so justly our boast, may readily become the

screen of private tyranny and inveterate abuse. This incapacity of doing good as well as harm has produced, comparatively speaking, little mischief in Great Britain, where the aristocratical element of the constitution is neither so predominant nor so much in opposition to the general interest as it may be deemed to have been in Ireland. But it is manifestly absurd to charge the Edwards and Henrys, or those to whom their authority was delegated at Dublin, with the crimes they vainly endeavored to chastise; much more to erect either the wild barbarians of the north, the O'Neal's and O'Connors, or the degenerate houses of Burke and Fitzgerald, into patriot assertors of their country's welfare. The laws and liberties of England were the best inheritance to which Ireland could attain; the sovereignty of the English crown her only shield against native or foreign tyranny. It was her calamity that these advantages were long withheld; but the blame can never fall upon the government of this island.

§ 12. In the contest between the houses of York and Lancaster, most of the English colony in Ireland had attached themselves to the fortunes of the White Rose; they even espoused the two pretenders, who put in jeopardy the crown of Henry VII., and thus became, of course, obnoxious to his jealousy, though he was politic enough to forgive in appearance their disaffection. But as Ireland had for a considerable time rather served the purposes of rebellious invaders than of the English monarchy, it was necessary to make her subjection, at least so far as the settlers of the pale were concerned, more than a word. This produced the famous statute of Drogheda in 1495, known by the name of *Poyning's Law*, from the lord deputy through whose vigor and prudence it was enacted. It contains a variety of provisions to restrain the lawlessness of the Anglo-Irish within the pale (for to no others could it immediately extend), and to confirm the royal sovereignty. All private hostilities without the deputy's license were declared illegal; but to excite the Irish to war was made high treason. Murders were to be prosecuted according to law, and not in the manner of the natives, by pillaging, or exacting a fine from the sept of the slayer. The citizens or freemen of towns were prohibited from receiving wages or becoming retainers of lords and gentlemen; and, to prevent the ascendency of the latter class, none who had not served apprenticeships were to be admitted as aldermen or freemen of corporations. The requisitions of coyne and livery, which had subsisted in spite

of the statutes of Kilkenny, were again forbidden, and those statutes were renewed and confirmed. The principal officers of state and the judges were to hold their patents during pleasure, "because of the great inconveniences that had followed from their being for term of life, to the king's grievous displeasure." A still more important provision, in its permanent consequence, was made, by enacting that all statutes lately made in England be deemed good and effectual in Ireland. It has been remarked that the same had been done by an Irish act of Edward IV. Some question might also be made, whether the word "lately" was not intended to limit this acceptation of English law. But in effect this enactment has made an epoch in Irish jurisprudence; all statutes made in England prior to the eighteenth year of Henry VII. being held equally valid in Ireland, while none of later date have any operation, unless specially adopted by its parliament; so that the law of the two countries has begun to diverge from that time, and after three centuries has been in several respects differently modified.

But even these articles of Poyning's law are less momentous than one by which it is peculiarly known. It is enacted that no parliament shall in future be holden in Ireland till the king's lieutenant shall certify to the king, under the great seal, the causes and considerations, and all such acts as it seems to them ought to be passed thereon, and such be affirmed by the king and his council, and his license to hold a parliament be obtained. Any parliament holden contrary to this form and provision should be deemed void. Thus, by securing the initiative power to the English council, a bridle was placed in the mouth of every Irish parliament. It is probable, also, that it was designed as a check on the lord-deputies, sometimes powerful Irish nobles, whom it was dangerous not to employ, but still more dangerous to trust. Whatever might be its motives, it proved in course of time the great means of preserving the subordination of an island which, from the similarity of constitution, and the high spirit of its inhabitants, was constantly panting for an independence which her more powerful neighbor neither desired nor dared to concede.

§ 13. No subjects of the crown in Ireland enjoyed such influence at this time as the earls of Kildare, whose possessions lying chiefly within the pale, they did not affect an ostensible independence, but generally kept in their hands the chief authority of government, though it was the policy of the English court, in its state of weakness, to balance them in

some measure by the rival family of Butler. But the self-confidence with which this exultation inspired the chief of the former house laid him open to the vengeance of Henry VIII.; he affected, while lord-deputy, to be surrounded by Irish lords, to assume their wild manners, and to intermarry his daughters with their race. The councilors of English birth or origin dreaded this suspicious approximation to their hereditary enemies; and Kildare, on their complaint, was compelled to obey his sovereign's order by repairing to London. He was committed to the Tower: on a premature report that he had suffered death, his son, a young man to whom he had delegated the administration, took up arms under the rash impulse of resentment; the primate was murdered by his wild followers; but the citizens of Dublin and the reinforcement sent from England suppressed this hasty rebellion, and its leader was sent a prisoner to London. Five of his uncles, some of them not concerned in the treason, perished with him on the scaffold; his father had been more fortunate in a natural death; one sole surviving child of twelve years old, who escaped to Flanders, became afterward the stock from which the great family of the Geraldines was restored.

The chieftains of Ireland were justly attentive to the stern and systematic despotism which began to characterize the English government, displayed, as it thus was, in the destruction of an ancient and royal house. But their intimidation produced contrary effects; they became more ready to profess allegiance, and to put on the exterior badges of submission; but more jealous of the crown in their hearts, more resolute to preserve their independence, and to withstand any change of laws. Thus, in the latter years of Henry, after the northern Irish had been beaten by an able deputy, lord Leonard Grey, and the lordship of Ireland, the title hitherto borne by the successors of Henry II., had been raised by act of parliament to the dignity of a kingdom, the native chiefs came in and submitted; the earl of Desmond, almost as independent as any of the natives, attended parliament, from which his ancestors had for some ages claimed a dispensation; several peerages were conferred, some of them on the old Irish families; fresh laws were about the same time enacted to establish the English dress and language, and to keep the colonists apart from Irish intercourse,[4] and, after a disuse of two hundred years, the authority of government was nominally

[4] Irish Statutes, 28 Hen. VIII., c. 15, 28. This act prohibits intermarriage or fostering with the Irish, which had indeed been previously restrained by other statutes.

recognized throughout Munster and Connaught. Yet we find that these provinces were still in nearly the same condition as before; the king's judges did not administer justice in them, the old Brehon usages continued to prevail even in the territories of the new peers, though their primogenitary succession was evidently incompatible with Irish tanistry. A rebellion of two septs in Leinster under Edward VI. led to a more complete reduction of their districts, called Leix and O'Fally, which in the next reign were made shire-land, by the names of King's and Queen's county. But at the accession of Elizabeth it was manifest that an arduous struggle would ensue between law and liberty; the one too nearly allied to cool-blooded oppression, the other to ferocious barbarism.

§ 14. Henry VIII. had no sooner prevailed on the lords and commons of England to renounce their spiritual obedience to the Roman see, and to acknowledge his own supremacy, than, as a natural consequence, he proceeded to establish it in Ireland. In the former instance, many of his subjects, and even his clergy, were secretly attached to the principles of the Reformation; as many others were jealous of ecclesiastical wealth, or eager to possess it. But in Ireland the reformers had made no progress; it had been among the effects of the pernicious separation of the two races, that the Irish priests had little intercourse with their bishops, who were nominated by the king, so that their synods are commonly recited to have been holden *inter Anglicos;* the bishops themselves were sometimes intruded by violence, more often dispossessed by it; a total ignorance and neglect prevailed in the church; and it is even found impossible to recover the succession of names in some sees. In a nation so ill predisposed, it was difficult to bring about a compliance with the king's demand of abjuring their religion; ignorant, but not indifferent, the clergy, with Cromer the primate at their head, and most of the lords and commons, in a parliament held at Dublin in 1536, resisted the act of supremacy; which was nevertheless ultimately carried by the force of government. Its enemies continued to withstand the new schemes of reformation, more especially in the next reign, when they went altogether to subvert the ancient faith. As it appeared dangerous to summon a parliament, the English liturgy was ordered by a royal proclamation; but Dowdall, the new primate, as stubborn an adherent of the Romish church as his predecessor, with most of the other bishops and clergy, refused obedience; and the Reformation was never legally established in the short reign

of Edward. His eldest sister's accession reversed, of course, what had been done, and restored tranquillity in ecclesiastical matters; for the protestants were too few to be worth persecution, nor were even those molested who fled to Ireland from the fires of Smithfield.

§ 15. Another scene of revolution ensued in a very few years. Elizabeth, having fixed the protestant church on a stable basis in England, sent over the earl of Sussex to hold an Irish parliament in 1560. The disposition of such an assembly might be presumed hostile to the projected reformations; but contrary to what had occurred on this side of the channel, though the peers were almost uniformly for the old religion, a large majority of the bishops are said to have veered round with the times, and supported, at least by conformity and acquiescence, the creed of the English court. In the house of commons pains had been taken to secure a majority; ten only out of twenty counties, which had at that time been formed, received the writ of summons; and the number of seventy-six representatives of the Anglo-Irish people was made up by the towns, many of them under the influence of the crown, some perhaps containing a mixture of protestant population. The English laws of supremacy and uniformity were enacted in nearly the same words; and thus the common prayer was at once set up instead of the mass, but with a singular reservation, that in those parts of the country where the minister had no knowledge of the English language, he might read the service in Latin. All subjects were bound to attend the public worship of the church, and every other was interdicted.

There were doubtless three arguments in favor of this compulsory establishment of the protestant church, which must have appeared so conclusive to Elizabeth and her council, that no one in that age could have disputed them without incurring, among other hazards, that of being accounted a lover of unreasonable paradoxes. The first was, that the protestant religion being true, it was the queen's duty to take care that her subjects should follow no other; the second, that, being an absolute monarch, or something like it, and a very wise princess, she had a better right to order what doctrine they should believe, than they could have to choose for themselves; the third, that Ireland, being as a handmaid, and a conquered country, must wait, in all important matters, on the pleasure of the greater island, and be accommodated to its revolutions. And, as it was natural that the queen and her advisers should not reject maxims

which all the rest of the world entertained, merely because they were advantageous to themselves, we need not, perhaps, be very acrimonious in censuring the laws whereon the church of Ireland is founded. But it is still equally true that they involve a principle essentially unjust, and that they have enormously aggravated, both in the age of Elizabeth and long afterward, the calamities and the disaffection of Ireland. An ecclesiastical establishment, that is, the endowment and privileges of a particular religious society, can have no advantages (relatively at least to the community where it exists) but its tendency to promote in that community good order and virtue, religious knowledge and edification. But, to accomplish this end in any satisfactory manner, it must be their church, and not that merely of the government; it should exist for the people, and in the people, and with the people. This, indeed, is so manifest, that the government of Elizabeth never contemplated the separation of a great majority as licensed dissidents from the ordinances established for their instruction. It was undoubtedly presumed, as it was in England, that the church and commonwealth, according to Hooker's language, were to be two denominations of the same society, and that every man in Ireland who appertained to the one ought to embrace, and in due season would embrace, the communion of the other. There might be ignorance, there might be obstinacy, there might be feebleness of conscience for a time; and perhaps some connivance would be shown to these; but that the prejudices of a majority should ultimately prevail so as to determine the national faith, that it should even obtain a legitimate indulgence for its own mode of worship, was abominable before God, and incompatible with the sovereign authority.

§ 16. This sort of reasoning, half bigotry, half despotism, was nowhere so preposterously displayed as in Ireland. The numerical majority is not always to be ascertained with certainty; and some regard may fairly, or rather necessarily, be had to rank, to knowledge, to concentration. But in that island the disciples of the Reformation were in the most inconsiderable proportion among the Anglo-Irish colony, as well as among the natives; their church was a government without subjects, a college of shepherds without sheep. I am persuaded that this was not intended nor expected to be a permanent condition; but such were the difficulties which the state of that unhappy nation presented, or such the negligence of its rulers, that scarce any pains were taken

in the age of Elizabeth, nor indeed in subsequent ages, to win the people's conviction, or to eradicate their superstitions, except by penal statutes and the sword. The Irish language was universally spoken without the pale; it had even made great progress within it; the clergy were principally of that nation; yet no translation of the Scriptures—the chief means through which the Reformation had been effected in England and Germany—nor even of the regular liturgy, was made into that tongue; nor was it possible, perhaps, that any popular instruction should be carried far in Elizabeth's reign, either by public authority or by the ministrations of the reformed clergy. Yet neither among the Welsh nor the Scots Highlanders, though Celtic tribes, and not much better in civility of life at that time than the Irish, was the ancient religion long able to withstand the sedulous preachers of reformation.

§ 17. It is evident from the history of Elizabeth's reign that the forcible dispossession of the catholic clergy, and their consequent activity in deluding a people too open at all times to their counsels, aggravated the rebellious spirit of the Irish, and rendered their obedience to the law more unattainable. But even independently of this motive, the Desmonds and Tyrones would have tried, as they did, the chances of insurrection, rather than abdicate their unlicensed but ancient chieftainship. It must be admitted that, if they were faithless in promises of loyalty, the crown's representatives in Ireland set no good example; and when they saw the spoliations of property by violence or pretext of law, the sudden executions on alleged treasons, the breaches of treaty, sometimes even the assassinations, by which a despotic policy went onward in its work of subjugation, they did but play the usual game of barbarians in opposing craft and perfidy, rather more gross, perhaps, and notorious, to the same engines of a dissembling government. Yet if we can put any trust in our own testimonies, the great families were, by mismanagement and dissension, the curse of their vassals. Sir Henry Sidney represents to the queen, in 1567, the wretched condition of the southern and western counties in the vast territories of the earls of Ormond, Desmond, and Clanricarde. "An unmeasurable tract," he says, "is now waste and uninhabited, which of late years was well tilled and pastured." "A more pleasant nor a more desolate land I never saw than from Youghall to Limerick." "So far hath that policy, or rather lack of policy, in keeping dissension among them prevailed, as now, albeit all that are alive would become honest

and live in quiet, yet are there not left alive in those two provinces the twentieth person necessary to inhabit the same." Yet this was but the first scene of calamity. After the rebellion of the last earl of Desmond, the counties of Cork and Kerry, his ample patrimony, were so wasted by war and military executions, and famine and pestilence, that, according to a contemporary writer, who expresses the truth with hyperbolical energy, "the land itself, which before those wars was populous, well inhabited, and rich in all the good blessings of God, being plenteous of corn, full of cattle, well stored with fruit and sundry other good commodities, is now become waste and barren, yielding no fruits, the pastures no cattle, the fields no corn, the air no birds, the seas, though full of fish, yet to them yielding nothing. Finally, every way the curse of God was so great, and the lands so barren both of man and beast, that whosoever did travel from the one end unto the other of all Munster, even from Waterford to the head of Limerick, which is about six-score miles, he should not meet any man, woman, or child, saving in towns and cities; nor yet see any beast but the very wolves, the foxes, and other like ravening beasts."[5] The severity of sir Arthur Grey, at this time deputy, was such that Elizabeth was assured he had left little for her to reign over but ashes and carcasses; and, though not by any means of too indulgent a nature, she was induced to recall him.[6] His successor, sir John Perrott, who held the viceroyalty only from 1584 to 1587, was distinguished for a sense of humanity and justice, together with an active zeal for the enforcement of law. Perrott, the best of Irish governors, soon fell a sacrifice to a court intrigue and the queen's jealousy; and the remainder of her reign was occupied with almost unceasing revolts of the earl of Tyrone, head of the great sect of O'Neil in Ulster, instigated by Rome and Spain, and endangering far more than any preceding rebellion, her sovereignty over Ireland.

§ 18. The old English of the pale were little more disposed to embrace the reformed religion, or to acknowledge the despotic principles of a Tudor administration, than the Irish themselves; and though they did not join the rebellions of those they so much hated, the queen's deputies had sometimes to encounter a more legal resistance. A new race of colonists had begun to appear in their train, eager for possessions,

[5] Hollingshead, 460.

[6] Spenser's Account of Ireland, p. 430 (vol. viii. of Todd's edition, 1805). Grey is the Arthegal of the Faëry Queen, the representative of the virtue of justice in that allegory, attended by Talus with his iron flail, which indeed was unsparingly employed to crush rebellion.

and for the rewards of the crown, contemptuous of the natives, whether aboriginal or of English descent, and in consequence the objects of their aversion or jealousy. Hence, in a parliament summoned by sir Henry Sidney in 1569, the first after that which had reluctantly established the protestant church, a strong country party, as it may be termed, was formed in opposition to the crown. They complained with much justice of the management by which irregular returns of members had been made; some from towns not incorporated, and which had never possessed the elective right; some self-chosen sheriffs and magistrates; some mere English strangers, returned for places which they had never seen. The judges, on reference to their opinion, declared the elections illegal in the two former cases, but confirmed the non-resident burgesses, which still left a majority for the court.

The Irish patriots, after this preliminary discussion, opposed a new tax upon wines, and a bill for the suspension of Poyning's law. The duty on wines, laid aside for the time, was carried in a subsequent session in the same year; and several other statutes were enacted, which, as they did not affect the pale, may possibly have encountered no opposition.

§ 19. In sir Henry Sidney's second government, which began in 1576, the pale was excited to a more strenuous resistance by an attempt to subvert their liberties. It had long been usual to obtain a sum of money for the maintenance of the household and of the troops by an assessment settled between the council and principal inhabitants of each district. This, it was contended by the government, was instead of the contribution of victuals which the queen, by her prerogative of purveyance, might claim at a fixed rate, much lower than the current price. It was maintained on the other side to be a voluntary benevolence. Sidney now devised a plan to change it for a cess or permanent composition for every plough-land, without regard to those which claimed exemption from the burden of purveyance; and imposed this new tax by order of council, as sufficiently warrantable by the royal prerogative. The land-owners of the pale remonstrated against such a violation of their franchises, and were met by the usual arguments. They appealed to the text of the laws; the deputy replied by precedents against law. These irregularities did not satisfy the gentry of the pale, who refused compliance with the demand, and still alleged that it was contrary both to reason and law to impose any charge upon them without parliament or grand council. A deputation was sent to England in the name of all the subjects of the

English pale. Sidney was not backward in representing their behavior as the effect of disaffection; nor was Elizabeth likely to recede where both her authority and her revenue were apparently concerned. But, after some demonstrations of resentment in committing the delegates to the Tower, she took alarm at the clamors of their countrymen; and, aware that the king of Spain was ready to throw troops into Ireland, desisted with that prudence which always kept her passion in command, accepting a voluntary composition for seven years in the accustomed manner.

§ 20. James I. ascended the throne with as great advantages in Ireland as in his other kingdoms. That island was already pacified by the submission of Tyrone; and all was prepared for a final establishment of the English power upon the basis of equal laws and civilized customs; a reformation which in some respects the king was not ill fitted to introduce. His reign is perhaps, on the whole, the most important in the constitutional history of Ireland, and that from which the present scheme of society in that country is chiefly to be deduced.

1. The laws of supremacy and uniformity, copied from those of England, were incompatible with any exercise of the Roman catholic worship, or with the admission of any members of that church into civil trust. It appears, indeed, that they were by no means strictly executed during the queen's reign; yet the priests were of course excluded, so far as the English authority prevailed, from their churches and benefices; the former were chiefly ruined; the latter fell to protestant strangers or to conforming ministers of native birth, dissolute and ignorant, as careless to teach as the people were predetermined not to listen.[7] The priests, many of them, engaged in a conspiracy with the court of Spain against the queen and her successor, and all deeming themselves unjustly and sacrilegiously despoiled, kept up the spirit of disaffection, or at least of resistance to religious innovation, throughout the kingdom. The accession of James seemed a sort of signal for casting off the yoke of heresy; in Cork, Waterford, and other cities, the people, not without consent of the magistrates, rose to restore the catholic worship; they seized the churches, ejected the ministers, marched in public processions, and shut their gates against the lord-deputy. He soon reduced them to obedience; but almost the whole nation was of the same faith, and disposed

[7] Spenser gives a bad character of the protestant clergy. It was chiefly on this account that the university of Dublin was founded in 1591.—Leland, ii., 319.

to struggle for a public toleration. This was beyond every question their natural right, and as certainly was it the best policy of England to have granted it; but the kingcraft and the priestcraft of the day taught other lessons. Priests were ordered by proclamation to quit the realm; the magistrates and chief citizens of Dublin were committed to prison for refusing to frequent the protestant church. The gentry of the pale remonstrated at the court of Westminster; and, though their delegates atoned for their self-devoted courage by imprisonment, the secret menace of expostulation seems to have produced, as usual, some effect, in a direction to the lord-deputy that he should endeavor to conciliate the recusants by instruction. These penalties of recusancy, from whatever cause, were very little enforced; but the catholics murmured at the oath of supremacy, which shut them out from every distinction: though here, again, the execution of the law was sometimes mitigated, they justly thought themselves humiliated, and the liberties of their country endangered, by standing thus at the mercy of the crown. And it is plain that even within the pale the compulsory statutes were at least far better enforced than under the queen; while in those provinces within which the law now first began to have its course the difference was still more acutely perceived.

§ 21.—2. The first care of the new administration was to perfect the reduction of Ireland into a civilized kingdom. Sheriffs were appointed throughout Ulster; the territorial divisions of counties and baronies were extended to the few districts that still wanted them; the judges of assize went their circuits everywhere; the customs of tanistry and gavel-kind were determined by the court of king's bench to be void; the Irish lords surrendered their estates to the crown, and received them back by the English tenures of knight-service or soccage; an exact account was taken of the lands each of these chieftains possessed, that he might be invested with none but those he occupied; while his tenants, exempted from those uncertain Irish exactions, the source of their servitude and misery, were obliged only to an annual quit-rent, and held their own lands by a free tenure. The king's writ was obeyed, at least in profession, throughout Ireland; after four centuries of lawlessness and misgovernment a golden period was anticipated by the English courtiers; nor can we hesitate to recognize the influence of enlightened, and sometimes of benevolent, minds, in the scheme of government now carried into effect. But two unhappy

maxims debased their motives, and discredited their policy: the first, that none but the true religion, or the state's religion, could be suffered to exist in the eye of the law; the second, that no pretext could be too harsh or iniquitous to exclude men of a different race or erroneous faith from their possessions.

§ 22.—3. The suppression of Slanes O'Neil's revolt in 1567 seems to have suggested the thought, or afforded the means, of perfecting the conquest of Ireland by the same methods that had been used to commence it—an extensive plantation of English colonists. The law of forfeiture came in very conveniently to further this great scheme of policy. O'Neil was attainted in the parliament of 1569; the territories which acknowledged him as chieftain, comprising a large part of Down and Antrim, were vested in the crown; and a natural son of sir Thomas Smith, secretary of state, who is said to have projected this settlement, was sent with a body of English to take possession of the lands thus presumed in law to be vacant. This expedition, however, failed of success, the native occupants not acquiescing in this doctrine of our lawyers. But fresh adventurers settled in different parts of Ireland; and particularly after the earl of Desmond's rebellion in 1583, whose forfeiture was reckoned at 574,628 Irish acres, though it seems probable that this is more than double the actual confiscation. These lands in the counties of Cork and Kerry, left almost desolate by the oppression of the Geraldines themselves, and the far greater cruelty of the government in subduing them, were parceled out among English undertakers at low rents, but on condition of planting eighty-six families on an estate of 12,000 acres, and in like proportion for smaller possessions. None of the native Irish were to be admitted as tenants; but neither this nor the other conditions were strictly observed by the undertakers, and the colony suffered alike by their rapacity and their neglect. The oldest of the second race of English families in Ireland are found among the descendants of these Munster colonists. We find among them, also, some distinguished names that have left no memorial in their posterity; sir Walter Raleigh, who here laid the foundation of his transitory success, and one not less in glory, and hardly less in misfortune, Edmund Spenser. In a country house once belonging to the Desmonds, on the banks of the Mulla, near Doneraile, the first three books of the "Faëry Queen" were written; and here, too, the poet awoke to the sad realities of life, and has left us, in his "Account of the State of Ireland," the most full

and authentic document that illustrates its condition. This treatise abounds with judicious observations; but we regret the disposition to recommend an extreme severity in dealing with the native Irish, which ill becomes the sweetness of his muse.

The two great native chieftains of the north, the earls of Tyrone and Tyrconnel, a few years after the king's accession, engaged, or were charged with having engaged, in some new conspiracy, and flying from justice, were attainted of treason. Five hundred thousand acres in Ulster were thus forfeited to the crown; and on this was laid the foundation of that great colony which has rendered that province, from being the seat of the wildest natives, the most flourishing, the most protestant, and the most enlightened part of Ireland. This plantation, though projected, no doubt, by the king and by lord Bacon, was chiefly carried into effect by the lord-deputy, sir Arthur Chichester, a man of great capacity, judgment, and prudence. He caused surveys to be taken of the several counties, fixed upon proper places for building castles or founding towns, and advised that the lands should be assigned, partly to English or Scots undertakers, partly to servitors of the crown, as they were called, men who had possessed civil or military offices in Ireland, partly to the old Irish, even some of those who had been concerned in Tyrone's rebellion. These and their tenants were exempted from the oath of supremacy imposed on the new planters. From a sense of the error committed in the queen's time by granting vast tracts to single persons, the lands were distributed in three classes, of 2000, 1500, and 1000 English acres; and in every county one-half of the assignments was to the smallest, the rest to the other two classes. Those who received 2000 acres were bound within four years to build a castle and bawn, or strong court-yard; the second class within two years to build a stone or brick house with a bawn; the third class a bawn only. The first were to plant on their lands within three years forty-eight able men, eighteen years old or upward, born in England or the inland parts of Scotland; the others to do the same in proportion to their estates. All the grantees were to reside within five years, in person or by approved agents, and to keep sufficient store of arms; they were not to alienate their lands without the king's license, nor to let them for less than twenty-one years; their tenants were to live in houses built in the English manner, and not dispersed, but in villages. The natives held their lands by the same conditions, except that of building forti-

fied houses; but they were bound to take no Irish exactions from their tenants, nor to suffer the practice of wandering with their cattle from place to place. In this manner were these escheated lands of Ulster divided among a hundred and four English and Scots undertakers, fifty-six servitors, and two hundred and eighty-six natives. All lands which through the late anarchy and change of religion had been lost to the church were restored; and some further provision was made for the beneficed clergy. Chichester, as was just, received an allotment in a far ampler measure than the common servants of the crown.

§ 23. This noble design was not altogether completed according to the platform. The native Irish, to whom some regard was shown by these regulations, were less equitably dealt with by the colonists, and by those other adventurers whom England continually sent forth to enrich themselves and maintain her sovereignty. Pretexts were sought to establish the crown's title over the possessions of the Irish; they were assailed through a law which they had but just adopted, and of which they knew nothing, by the claims of a litigious and encroaching prerogative, against which no prescription could avail, nor any plea of fairness and equity obtain favor in the sight of English-born judges. Thus, in the King's and Queen's counties, and in those of Leitrim, Longford, and Westmeath, 385,000 acres were adjudged to the crown, and 66,000 in that of Wicklow. The greater part was, indeed, regranted to the native owners on a permanent tenure; and some apology might be found for this harsh act of power in the means it gave of civilizing those central regions, always the shelter of rebels and robbers; yet this did not take off the sense of forcible spoliation which every foreign tyranny renders so intolerable. Surrenders were extorted by menaces; juries refusing to find the crown's title were fined by the council; many were dispossessed without any compensation, and sometimes by gross perjury, sometimes by barbarous cruelty. It is said that in the county of Longford the Irish had scarcely one-third of their former possessions assigned to them, out of three-fourths which had been intended by the king. Those who had been most faithful, those even who had conformed to the protestant church, were little better treated than the rest. Hence, though in many new plantations great signs of improvement were perceptible, though trade and tillage increased, and towns were built, a secret rankling for those injuries was at the heart of Ireland; and in these two leading grievances, the penal laws against

recusants, and the inquisition into defective titles, we trace, beyond a shadow of doubt, the primary source of the rebellion in 1641.

§ 24.—4. Before the reign of James, Ireland had been regarded either as a conquered country or as a mere colony of English, according to the persons or the provinces which were in question. The whole island now took a common character, that of a subordinate kingdom, inseparable from the English crown, and dependent also—at least as was taken for granted by our lawyers—on the English legislature, but governed after the model of our constitution, by nearly the same laws, and claiming entirely the same liberties. It was a natural consequence that an Irish parliament should represent, or affect to represent, every part of the kingdom. None of Irish blood had ever sat, either lords or commoners, till near the end of Henry VIII.'s reign. The representation of the twelve counties into which Munster and part of Leinster were divided, and of a few towns, which existed in the reign of Edward III., if not later, was reduced by the defection of so many English families to the limits of the four shires of the pale. The old counties, when they returned to their allegiance under Henry VIII., and those afterward formed by Mary and Elizabeth, increased the number of the commons; though in that of 1567, as has been mentioned, the writs for some of them were arbitrarily withheld. The two queens did not neglect to create new boroughs, in order to balance the more independent representatives of the old Anglo-Irish families by the English retainers of the court. Yet it is said that in seventeen counties out of thirty-two, into which Ireland was finally parceled, there was no town that returned burgesses to parliament before the reign of James I., and the whole number in the rest was but about thirty. He created at once forty new boroughs, or possibly rather more; for the number of the commons in 1613 appears to have been 232. It was several times afterward augmented, and reached its complement of 300 in 1692. These grants of the elective franchise were made, not indeed improvidently, but with very sinister intents toward the freedom of parliament; two-thirds of an Irish house of commons, as it stood in the eighteenth century, being returned with the mere farce of election by wretched tenants of the aristocracy.

§ 25. The province of Connaught, with the adjoining county of Clare, was still free from the intrusion of English colonists. The Irish had complied, both under Elizabeth and James, with the usual conditions of surrendering their estates

to the crown in order to receive them back by a legal tenure. But as these grants, by some negligence, had not been duly enrolled in chancery (though the proprietors had paid large fees for that security), the council were not ashamed to suggest, or the king to adopt, an iniquitous scheme of declaring the whole country forfeited, in order to form another plantation as extensive as that of Ulster. The remonstrances of those whom such a project threatened put a present stop to it; and Charles, on ascending the throne, found it better to hear the proposals of his Irish subjects for a composition. After some time, it was agreed between the court and the Irish agents in London, that the kingdom should voluntarily contribute £120,000, in three years by equal payments, in return for certain graces, as they were called, which the king was to bestow. These went to secure the subject's title to his lands against the crown after sixty years' possession, and gave the people of Connaught leave to enroll their grants, relieving also the settlers in Ulster or other places from the penalties they had incurred by similar neglect. The abuses of the council-chamber in meddling with private causes, the oppression of the court of wards, the encroachments of military authority, and excesses of the soldiers, were restrained. A free trade with the king's dominions or those of friendly powers was admitted. The recusants were allowed to sue for livery of their estates in the court of wards, and to practice in courts of law, on taking an oath of mere allegiance instead of that of supremacy. Unlawful exactions and severities of the clergy were prohibited. These reformations of unquestionable and intolerable evils, as beneficial as those contained nearly at the same moment in the Petition of Right, would have saved Ireland long ages of calamity, if they had been as faithfully completed as they seemed to be graciously conceded. But Charles I. emulated on this occasion the most perfidious tyrants. It had been promised by an article in these graces that a parliament should be held to confirm them. Writs of summons were accordingly issued by the lord-deputy, but with no consideration of that fundamental rule established by Poyning's law, that no parliament should be held in Ireland until the king's license be obtained. This irregularity was of course discovered in England, and the writs of summons declared to be void. It would have been easy to remedy this mistake, if such it were, by proceeding in the regular course with a royal license. But this was withheld; no parliament was called for a considerable time; and, when the three years had elapsed

during which the voluntary contribution had been payable, the king threatened to straiten his graces if it were not renewed.

§ 26. He had now placed in the viceroyalty of Ireland that star of exceeding brightness, but sinister influence, the willing and able instrument of despotic power, lord Strafford. In his eyes the country he governed belonged to the crown by right of conquest; neither the original natives, nor even the descendants of the conquerors themselves, possessing any privileges which could interfere with its sovereignty. He found two parties extremely jealous of each other, yet each loath to recognize an absolute prerogative, and thus in some measure having a common cause. The protestants, not a little from bigotry, but far more from a persuasion that they held their estates on the tenure of a rigid religious monopoly, could not endure to hear of a toleration of popery, which, though originally demanded, was not even mentioned in the king's graces; and disapproved the indulgence shown by those graces to recusants, which is said to have been followed by an impolitic ostentation of the Romish worship. They objected to a renewal of the contribution, both as the price of this dangerous tolerance of recusancy and as debarring the protestant subjects of their constitutional right to grant money only in parliament. Wentworth, however, insisted upon its payment for another year, at the expiration of which a parliament was to be called.

The king did not come without reluctance into this last measure, hating, as he did, the very name of parliament; but the lord-deputy confided in his own energy to make it innoxious and serviceable. They conspired together how to extort the most from Ireland, and concede the least; Charles, in truth, showing a most selfish indifference to any thing but his own revenue and a most dishonorable unfaithfulness to his word. The parliament met in 1634, with a strong desire of insisting on the confirmation of the graces they had already paid for; but Wentworth had so balanced the protestant and recusant parties, employed so skillfully the resources of fair promises and intimidation, that he procured six subsidies to be granted before a prorogation, without any mutual concession from the crown. It had been agreed that a second session should be held for confirming the graces; but in this, as might be expected, the supplies having been provided, the request of both houses that they might receive the stipulated reward met with a cold reception; and ultimately the most essential articles, those establishing a sixty

years' prescription against the crown, and securing the titles of proprietors in Clare and Connaught, as well as those which relieved the catholics in the court of wards from the oath of supremacy, were laid aside. Statutes, on the other hand, were borrowed from England, especially that of uses, which cut off the methods they had hitherto employed for evading the law's severity.

Strafford had always determined to execute the project of the late reign with respect to the western counties. He proceeded to hold an inquisition in each county of Connaught, and summoned juries in order to preserve a mockery of justice in the midst of tyranny. They were required to find the king's title to all the lands, on such evidence as could be found and was thought fit to be laid before them; and were told that what would be best for their own interest would be to return such a verdict as the king desired; what would be best for his, to do the contrary; since he was able to establish it without their consent, and wished only to invest them graciously with a large part of what they now unlawfully withheld from him. These menaces had their effect in all counties except that of Galway, where a jury stood out obstinately against the crown, and being in consequence, as well as the sheriff, summoned to the castle in Dublin, were sentenced to an enormous fine. Yet the remonstrances of the western proprietors were so clamorous, that no steps were immediately taken for carrying into effect the designed plantation; and the great revolutions of Scotland and England which soon ensued gave another occupation to the mind of lord Strafford. It has never been disputed that a more uniform administration of justice in ordinary cases; a stricter coercion of outrage; a more extensive commerce, evidenced by the augmentation of customs; above all, the foundation of the great linen manufacture in Ulster, distinguished the period of his government. But it is equally manifest that neither the reconcilement of parties, nor their affection to the English crown, could be the result of his arbitrary domination; and that, having healed no wound he found, he left others to break out after his removal. The despotic violence of this minister toward private persons, and those of great eminence, is in some instances well known by the proceedings on his impeachment, and in others is sufficiently familiar by our historical and biographical literature. It is, indeed, remarkable that we find among the objects of his oppression and insult all that most illustrates the contemporary annals of Ireland, the venerable learning of Usher, the

pious integrity of Bedell, the experienced wisdom of Cork, and the early virtue of Clanricarde.

The parliament assembled by Strafford in 1640 began with loud professions of gratitude to the king for the excellent governor he had appointed over them; they voted subsidies to pay a large army raised to serve against the Scots, and seemed eager to give every manifestation of zealous loyalty. But after their prorogation, and during the summer of that year, as rapid a tendency to a great revolution became visible as in England; the commons, when they met again, seemed no longer the same men; and, after the fall of their great viceroy, they coalesced with his English enemies to consummate his destruction. Hate long smothered by fear, but inflamed by the same cause, broke forth in a remonstrance of the commons presented through a committee, not to the king, but a superior power, the long parliament of England. The two houses united to avail themselves of the advantageous moment, and to extort, as they very justly might, from the necessities of Charles that confirmation of his promises which had been refused in his prosperity. Both parties, catholic as well as protestant, acted together in this national cause, shunning for the present to bring forward those differences which were not the less implacable for being thus deferred. The catalogue of temporal grievances was long enough to produce this momentary coalition: it might be groundless in some articles, it might be exaggerated in more, it might in many be of ancient standing; but few can pretend to deny that it exhibits a true picture of the misgovernment of Ireland at all times, but especially under the earl of Strafford. The king, in May, 1641, consented to the greater part of their demands, but unfortunately they were never granted by law.

But the disordered condition of his affairs gave encouragement to hopes far beyond what any parliamentary remonstrances could realize; hopes long cherished when they had seemed vain to the world, but such as courage and bigotry and resentment would never lay aside. The court of Madrid had not abandoned its connection with the disaffected Irish, especially of the priesthood; the son of Tyrone, and many followers of that cause, served in its armies; and there seems much reason to believe that in the beginning of 1641 the project of insurrection was formed among the expatriated Irish, not without the concurrence of Spain, and perhaps of Richelieu. The government had passed from the vigorous hands of Strafford into those of two lords justices, sir Wil-

liam Parsons and sir John Borlase, men by no means equal to the critical circumstances wherein they were placed, though possibly too severely censured by those who do not look at their extraordinary difficulties with sufficient candor. The primary causes of the rebellion are not to be found in their supineness or misconduct, but in the two great sins of the English government—in the penal laws as to religion, which pressed on almost the whole people, and in the systematic iniquity which despoiled them of their possessions. They could not be expected to miss such an occasion of revolt; it was an hour of revolution, when liberty was won by arms, and ancient laws were set at naught; the very success of their worst enemies, the covenanters in Scotland, seemed the assurance of their own victory, as it was the reproach of their submission.

§ 27. The rebellion broke out, as is well known, by a sudden massacre of the Scots and English in Ulster, designed, no doubt, by a vindictive and bigoted people to extirpate those races, and, if contemporary authorities are to be credited, falling little short of this in its execution. Their evident exaggeration has long been acknowledged; but possibly the skepticism of later writers has extenuated rather too much the horrors of this massacre. It was certainly not the crime of the catholics generally; nor, perhaps, in the other provinces of Ireland are they chargeable with more cruelty than their opponents. Whatever may have been the original intentions of the lords of the pale, or of the Anglo-Irish professing the old religion in general (which has been a problem in history), a few months only elapsed before they were almost universally engaged in the war. The old distinctions of Irish and English blood were obliterated by those of religion; and it became a desperate contention whether the majority of the nation should be trodden to the dust by forfeiture and persecution, or the crown lose every thing beyond a nominal sovereignty over Ireland. The insurgents, who might once, perhaps, have been content with a repeal of the penal laws, grew naturally in their demands through success, or rather through the inability of the English government to keep the field, and began to claim the entire establishment of their religion; terms in themselves not unreasonable, nor apparently disproportionate to their circumstances, and which the king was, in his distresses, nearly ready to concede, but such as never could have been obtained from a third party, of whom they did not sufficiently think—the parliament and people of England. The com-

mons had, at the very beginning of the rebellion, voted that all the forfeited estates of the insurgents should be allotted to such as should aid in reducing the island to obedience; and thus rendered the war desperate on the part of the Irish. No great efforts were made, however, for some years; but, after the king's person had fallen into their hands, the victorious party set themselves in earnest to effect the conquest of Ireland. This was achieved by Cromwell and his powerful army after several years, with such bloodshed and rigor that, in the opinion of lord Clarendon, the sufferings of that nation, from the outset of the rebellion to its close, have never been surpassed but by those of the Jews in their destruction by Titus.

§ 28. At the restoration of Charles II. there were in Ireland two people, one either of native or old English blood, the other of recent settlement; one catholic, the other protestant; one humbled by defeat, the other insolent with victory; one regarding the soil as his ancient inheritance, the other as his acquisition and reward. There were three religions—for the Scots of Ulster and the army of Cromwell had never owned the episcopal church, which for several years had fallen almost as low as that of Rome. There were claims, not easily set aside on the score of right, to the possession of lands, which the entire island could not satisfy. In England, little more had been necessary than to revive a suspended constitution; in Ireland, it was something beyond a new constitution and code of law that was required—it was the titles and boundaries of each man's private estate that were to be litigated and adjudged. The episcopal church was restored with no delay, as never having been abolished by law; and a parliament, containing no catholics, and not many vehement non-conformists, proceeded to the great work of settling the struggles of opposite claimants by a fresh partition of the kingdom.

§ 29. The king had already published a declaration for the settlement of Ireland, intended as the basis of an act of parliament. The adventurers, or those who, on the faith of several acts passed in England in 1642, with the assent of the late king, had advanced money for quelling the rebellion, in consideration of lands to be allotted to them in certain stipulated proportions, and who had, in general, actually received them from Cromwell, were confirmed in all the lands possessed by them on the 7th of May, 1659; and all the deficiencies were to be supplied before the next year. The army was confirmed in the estates already allotted for their

pay, with an exception of church-lands and some others. Those officers who had served in the royal army against the Irish before 1649 were to be satisfied for their pay, at least to the amount of five-eighths, out of lands to be allotted for that purpose. Innocent papists, that is, such as were not concerned in the rebellion, and whom Cromwell had arbitrarily transplanted into Connaught, were to be restored to their estates, and those who possessed them to be indemnified. Those who had submitted to the peace of 1648, and had not been afterward in arms, if they had not accepted lands in Connaught, were also to be restored as soon as those who now possessed them should be satisfied for their expenses. Those who had served the king abroad, and thirty-six enumerated persons of the Irish nobility and gentry, were to be put on the same footing as the last. The precedency of restitution, an important point where the claims exceeded the means of satisfying them, was to be in the order above specified.

This declaration was by no means pleasing to all concerned. The loyal officers who had served before 1649 murmured that they had little prospect of more than twelve shillings and sixpence in the pound, while the republican army of Cromwell would receive the full value. The Irish were more loud in their complaints; no one was to be held innocent who had been in the rebel quarters before the cessation of 1643; and other qualifications were added so severe that hardly any could expect to come within them. In the house of commons the majority, consisting very much of the new interests, that is, of the adventurers and army, were in favor of adhering to the declaration. In the house of lords it was successfully urged that, by gratifying the new men to the utmost, no fund would be left for indemnifying the loyalists or the innocent Irish. It was proposed that, if the lands not yet disposed of should not be sufficient to satisfy all the interests for which the king had meant to provide by his declaration, there should be a proportional defalcation out of every class for the benefit of the whole. These discussions were adjourned to London, where delegates of the different parties employed every resource of intrigue at the English court. The king's bias toward the religion of the Irish had rendered him their friend, and they seemed, at one time, likely to reverse much that had been intended against them; but their agents grew rash with hope, assumed a tone of superiority which ill became their condition, affected to justify their rebellion, and finally so much disgusted their

sovereign that he ordered the act of settlement to be sent back with little alteration, except the insertion of some more Irish nominees.

The execution of this act was intrusted to English commissioners, from whom it was reasonable to hope for an impartiality which could not be found among the interested classes. Notwithstanding the rigorous proofs nominally exacted, more of the Irish were pronounced innocent than the commons had expected; and the new possessors having the sway of that assembly, a clamor was raised that the popish interest had prevailed: some talked of defending their estates by arms, some even meddled in fanatical conspiracies against the government; it was insisted that a closer inquisition should be made and stricter qualifications demanded. The manifest deficiency of lands to supply all the claimants for whom the act of settlement provided, made it necessary to resort to a supplemental measure, called the act of explanation. The adventurers and soldiers relinquished one-third of the estates enjoyed by them on the 7th of May, 1659. Twenty Irish nominees were added to those who were to be restored by the king's favor; but all those who had not already been adjudged innocent, more than three thousand in number, were absolutely cut off from any hope of restitution. The great majority of these, no question, were guilty; yet they justly complained of this confiscation without a trial. Upon the whole result, the Irish catholics, having previously held about two-thirds of the kingdom, lost more than one-half of their possessions by forfeiture on account of their rebellion. If we can rely at all on the calculations, made almost in the infancy of political arithmetic by one of its most diligent investigators, they were diminished also by much more than one-third through the calamities of that period.

It is more easy to censure the particular inequalities, or even in some respects injustice, of the act of settlement, than to point out what better course was to have been adopted. The re-adjustment of all private rights after so entire a destruction of their landmarks, could only be effected by the coarse process of general rules. Nor does it appear that the catholics, considered as a great mass, could reasonably murmur against the confiscation of half their estates, after a civil war wherein it is evident that so large a proportion of themselves were concerned. Charles, it is true, had not been personally resisted by the insurgents; but, as chief of England, he stood in the place of Cromwell, and equally represented the

sovereignty of the greater island over the lesser, which under no form of government it would concede.

§ 30. The catholics, however, thought themselves oppressed by the act of settlement, and could not forgive the duke of Ormond for his constant regard to the protestant interests and the supremacy of the English crown. They had enough to encourage them in the king's bias toward their religion, which he was able to manifest more openly than in England. Under the administration of lord Berkely in 1670, at the time of Charles's conspiracy with the king of France to subvert religion and liberty, they began to menace an approaching change, and to aim at revoking, or materially weakening, the act of settlement. The most bigoted and insolent of the popish clergy, who had lately rejected with indignation an offer of more reasonable men to renounce the tenets obnoxious to civil governments, were countenanced at Dublin; but the first alarm of the new proprietors, as well as the general apprehension of the court's designs in England, soon rendered it necessary to desist from the projected innovations. The next reign, of course, reanimated the Irish party; a dispensing prerogative set aside all the statutes; every civil office, the courts of justice and the privy council, were filled with catholics; the protestant soldiers were disbanded; the citizens of that religion were disarmed; the tithes were withheld from their clergy; they were suddenly reduced to feel that bitter condition of a conquered and proscribed people which they had long rendered the lot of their enemies. From these enemies, exasperated by bigotry and revenge, they could have nothing but a full and exceeding measure of retaliation to expect; nor had they even the last hope that an English king, for the sake of his crown and country, must protect those who formed the strongest link between the two islands. A man violent and ambitious, without superior capacity, the earl of Tyrconnel, lord-lieutenant in 1687, and commander of the army, looked only to his master's interests, in subordination to those of his countrymen and of his own. It is now ascertained that, doubtful of the king's success in the struggle for restoring popery in England, he had made secret overtures to some of the French agents for casting off all connection with that kingdom in case of James's death, and, with the aid of Louis, placing the crown of Ireland on his own head.

§ 31. The Revolution in England was followed by a war in Ireland of three years' duration, and a war on both sides, like that of 1641, for self-preservation. In the parliament

held by James at Dublin in 1690, the act of settlement was repealed, and above 2000 persons attainted by name—both, it has been said, perhaps with little truth, against the king's will, who dreaded the impetuous nationality that was tearing away the bulwarks of his throne. But the magnanimous defense of Derry and the splendid victory of the Boyne restored the protestant cause; though the Irish, with the succor of French troops, maintained for two years a gallant resistance, they could not ultimately withstand the triple superiority of military talents, resources, and discipline. Their bravery, however, served to obtain the articles of Limerick on the surrender of that city—conceded by their noble-minded conquerer, against the disposition of those who longed to plunder and persecute their fallen enemy. By the first of these articles, "the Roman catholics of this kingdom shall enjoy such privileges in the exercise of their religion as are consistent with the laws of Ireland, or as they did enjoy in the reign of king Charles II.; and their majesties, as soon as their affairs will permit them to summon a parliament in this kingdom, will endeavor to procure the said Roman catholics such further security in that particular as may preserve them from any disturbance upon the account of their said religion." The second secures to the inhabitants of Limerick and other places then in possession of the Irish, and to all officers and soldiers then in arms who should return to their majesties' obedience, and to all such as should be under their protection in the counties of Limerick, Kerry, Clare, Galway, and Mayo, all their estates, and all their rights, privileges, and immunities, which they held in the reign of Charles II., free from all forfeitures or outlawries incurred by them.

This second article, but only as to the garrison of Limerick or other persons in arms, is confirmed by statute some years afterward. The first article seems, however, to be passed over. The forfeitures on account of the rebellion, estimated at 1,060,792 acres, were somewhat diminished by restitutions to the ancient possessors under the capitulation; the greater part were lavishly distributed to English grantees. It appears from hence that at the end of the seventeenth century the Irish or Anglo-Irish catholics could hardly possess above one-sixth or one-seventh of the kingdom. They were still formidable from their numbers and their sufferings; and the victorious party saw no security but in a system of oppression, contained in a series of laws during the reigns of William and Anne, which have scarce a parallel in European history, unless it be that of the protestants in France, after the

revocation of the edict of Nantes, who yet were but a feeble minority of the whole people. No papist was allowed to keep a school, or to teach any in private houses, except the children of the family. Severe penalties were denounced against such as should go themselves or send others for education beyond seas in the Romish religion; and on probable information given to a magistrate, the burden of proving the contrary was thrown on the accused—the offense not to be tried by a jury, but by justices at quarter sessions. Intermarriages between persons of different religion, and possessing any estate in Ireland, were forbidden; the children, in case of either parent being protestant, might be taken from the other, to be educated in that faith. No papist could be guardian to any child; but the court of chancery might appoint some relation or other person to bring up the ward in the protestant religion. The eldest son, being a protestant, might turn his father's estate in fee simple into a tenancy for life, and thus secure his own inheritance. But if the children were all papists, the father's lands were to be of the nature of gavelkind, and descend equally among them. Papists were disabled from purchasing lands except for terms of not more than thirty-one years, at a rent not less than two-thirds of the full value. They were even to conform within six months after any title should accrue by descent, devise, or settlement, on pain of forfeiture to the next protestant heir—a provision which seems intended to exclude them from real property altogether, and to render the others almost supererogatory. Arms, says the poet, remain to be plundered; but the Irish legislature knew that the plunder would be imperfect and insecure while arms remained: no papist was permitted to retain them, and search might be made at any time by two justices. The bare celebration of catholic rites was not subjected to any fresh penalties; but regular priests, bishops, and others claiming jurisdiction, and all who should come into the kingdom from foreign parts, were banished, on pain of transportation in case of neglecting to comply, and of high treason in case of returning from banishment. Lest these provisions should be evaded, priests were required to be registered; they were forbidden to leave their own parishes, and rewards were held out to informers who should detect the violations of these statutes, to be levied on the popish inhabitants of the country. To have exterminated the catholics by the sword, or expelled them, like the Moriscoes of Spain, would have been little more repugnant to justice and humanity, but incomparably more politic.

§ 32. It may easily be supposed that no political privileges would be left to those who were thus debarred of the common rights of civil society. The Irish parliament had never adopted the act passed in the fifth of Elizabeth, imposing the oath of supremacy on the members of the commons. It had been full of catholics under the queen and her two next successors. In the second session of 1641, after the flames of rebellion had enveloped almost all the island, the house of commons were induced to exclude, by a resolution of their own, those who would not take that oath; a step which can only be judged in connection with the general circumstances of Ireland at that awful crisis. An act of the English parliament after the Revolution requires every member of both houses of parliament to take the new oaths of allegiance and supremacy, and to subscribe the declaration against transubstantiation before taking his seat. This statute was adopted and enacted by the Irish parliament in 1782, after they had renounced the legislative supremacy of England under which it had been enforced. The elective franchise, which had been rather singularly spared in an act of Anne, was taken away from the Roman catholics of Ireland in 1715, or, as some think, not absolutely till 1727.

These tremendous statutes had in some measure the effect which their framers designed. The wealthier families, against whom they were principally leveled, conformed in many instances to the protestant church. The catholics were extinguished as a political body; and, though any willing allegiance to the house of Hanover would have been monstrous, and it is known that their bishops were constantly nominated to the pope by the Stuart princes, they did not manifest at any period, or even during the rebellions of 1715 and 1745, the least movement toward a disturbance of the government. Yet for thirty years after the accession of George I. they continued to be insulted in public proceedings under the name of the common enemy, sometimes oppressed by the enactment of new statutes, or the stricter execution of the old; till in the latter years of George II. their peaceable deportment, and the rise of a more generous spirit among the Irish protestants, not only sheathed the fangs of the law, but elicited expressions of esteem from the ruling powers, which they might justly consider as the pledge of a more tolerant policy. The mere exercise of their religion in an obscure manner had long been permitted without molestation.

Thus in Ireland there were three nations, the original natives, the Anglo-Irish, and the new English; the two former

catholic, except some, chiefly of the upper classes, who had conformed to the church; the last wholly protestant. There were three religions, the Roman catholic, the established or Anglican, and the Presbyterian; more than one-half of the protestants, according to the computation of those times, belonging to the latter denomination. These, however, in a less degree, were under the ban of the law as truly as the catholics themselves; they were excluded from all civil and military offices by a test act, and even their religious meetings were denounced by penal statutes. Yet the house of commons after the Revolution always contained a strong presbyterian body, and being unable, as it seems, to obtain an act of indemnity for those who had taken commissions in the militia, while the rebellion of 1715 was raging in Great Britain, had recourse to a resolution, that whoever should prosecute any dissenter for accepting such a commission is an enemy to the king and the protestant interest. They did not even obtain a legal toleration till 1720. It seems as if the connection of the two islands, and the whole system of constitutional laws in the lesser, subsisted only for the sake of securing the privileges and emoluments of a small number of ecclesiastics, frequently strangers, who rendered very little return for their enormous monopoly. A great share, in fact, of the temporal government under George II. was thrown successively into the hands of two primates, Boulter and Stone: the one a worthy but narrow-minded man, who showed his egregious ignorance of policy in endeavoring to promote the wealth and happiness of the people, whom he at the same time studied to depress and discourage in respect of political freedom; the other an able but profligate and ambitious statesman, whose name is mingled, as an object of odium and enmity, with the first great struggles of Irish patriotism.

The new Irish nation, or rather the protestant nation, since all distinctions of origin have, from the time of the great rebellion, been merged in those of religion, partook in large measure of the spirit that was poured out on the advocates of liberty and the revolution in the sister kingdom. Their parliament was always strongly whig, and scarcely manageable during the later years of the queen. They began to assimilate themselves more and more to the English model, and to cast off by degrees the fetters that galled and degraded them. By Poyning's celebrated law, the initiative power was reserved to the English council. This act, at one time popular in Ireland, was afterward justly regarded

as destructive of the rights of their parliament, and a badge of the nation's dependence. It was attempted by the commons in 1641, and by the catholic confederates in the rebellion, to procure its repeal, which Charles I. steadily refused, till he was driven to refuse nothing. In his son's reign, it is said that "the council framed bills altogether; a negative alone on them and their several provisoes was left to parliament; only a general proposition for a bill by way of address to the lord-lieutenant and council came from parliament; nor was it till after the revolution that heads of bills were presented; these last, in fact, resembled acts of parliament or bills, with only the small difference of 'We pray that it may be enacted,' instead of 'Be it enacted.'" They assumed, about the same time, the examination of accounts, and of the expenditure of public money.

Meanwhile, as they gradually emancipated themselves from the ascendency of the crown, they found a more formidable power to contend with in the English parliament. It was acknowledged, by all at least of the protestant name, that the crown of Ireland was essentially dependent on that of England, and subject to any changes that might affect the succession of the latter. But the question as to the subordination of her legislature was of a different kind. The precedence and authorities of early ages seem not decisive; so far as they extend, they rather countenance the opinion that English statutes were of themselves valid in Ireland. But from the time of Henry VI. or Edward IV. it was certainly established that they had no operation, unless enacted by the Irish parliament. This, however, would not legally prove that they might not be binding, if express words to that effect were employed; and such was the doctrine of lord Coke and of other English lawyers. This came into discussion about the eventful period of 1641. The Irish, in general, protested against the legislative authority of England as a novel theory which could not be maintained; and two treatises on the subject, one ascribed to lord-chancellor Bolton, or more probably to an eminent lawyer, Patrick Darcy, for the independence of Ireland, another, in answer to it, by sergeant Mayart, may be read in the Hibernica of Harris. Very few instances occurred before the Revolution wherein the English parliament thought fit to include Ireland in its enactments, and none, perhaps, wherein they were carried into effect. But after the Revolution several laws of great importance were passed in England to bind the other kingdom, and acquiesced in without express opposition by its parlia-

ment. Molyneux, however, in his celebrated "Case of Ireland's being bound by Acts of Parliament in England stated," published in 1697, set up the claim of his country for absolute legislative independency. The house of commons at Westminster came to resolutions against this book; and, with their high notions of parliamentary sovereignty, were not likely to desist from a pretension which, like the very similar claim to impose taxes in America, sprung, in fact, from the semi-republican scheme of constitutional law established by means of the Revolution. It is evident that while the sovereignty and enacting power was supposed to reside wholly in the king, and only the power of consent in the two houses of parliament, it was much less natural to suppose a control of the English legislature over other dominions of the crown, having their own representation for similar purposes, than after they had become, in effect and in general sentiment, though not quite in the statute-book, co-ordinate partakers of the supreme authority. The Irish parliament, however, advancing as it were in a parallel line, had naturally imbibed the same sense of its own supremacy, and made at length an effort to assert it. A judgment from the court of exchequer in 1719 having been reversed by the house of lords, an appeal was brought before the lords in England, who affirmed the judgment of the exchequer. The Irish lords resolved that no appeal lay from the court of exchequer in Ireland to the king in parliament in Great Britain; and the barons of that court, having acted in obedience to the order of the English lords, were taken into the custody of the black-rod. That house next addressed the king, setting forth their reasons against admitting the appellant jurisdiction. But the lords in England, after requesting the king to confer some favor on the barons of the exchequer who had been censured and illegally imprisoned for doing their duty, ordered a bill to be brought in for better securing the dependency of Ireland upon the crown of Great Britain, which declares

"That the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the house of lords of Ireland have not, nor of right ought to have, any jurisdiction to judge of, reverse, or affirm any judgment, sentence, or decree given or made in any court within the said kingdom; and that all proceedings before the said house of lords upon any such judgment, sentence, or decree, are, and are hereby declared to be, utterly null and void, to all intents and purposes whatsoever."[8]

[8] Geo. I., c. 5. This bill passed by 140 to 83.

The English government found no better method of counteracting this rising spirit of independence than by bestowing the chief posts in the state and church on strangers, in order to keep up what was called the English interest. This wretched policy united the natives of Ireland in jealousy and discontent, which the latter years of Swift were devoted to inflame. It was impossible that the kingdom should become, as it did under George II., more flourishing through its great natural fertility, its extensive manufacture of linen, and its facilities for commerce, though much restricted, the domestic alarm from the papists also being allayed by their utter prostration, without writhing under the indignity of its subordination; or that a house of commons, constructed so much on the model of the English, could hear patiently of liberties and privileges it did not enjoy.

§ 33. These aspirations for equality first, perhaps, broke out into audible complaints in the year 1753. The country was in so thriving a state that there was a surplus revenue after payment of all charges. The house of commons determined to apply this to the liquidation of a debt. The government, though not unwilling to admit of such an application, maintained that the whole revenue belonged to the king, and could not be disposed of without his previous consent. In England, where the grants of parliament are appropriated according to estimates, such a question could hardly arise; nor would there, I presume, be the slightest doubt as to the control of the house of commons over a surplus income. But in Ireland the practice of appropriation seems never to have prevailed, at least so strictly; and the constitutional right might perhaps not unreasonably be disputed. After long and violent discussions, wherein the speaker of the commons and other eminent men bore a leading part on the popular side, the crown was so far victorious as to procure some motions to be carried, which seemed to imply its authority; but the house took care, by more special applications of the revenue, to prevent the recurrence of an undisposed surplus. From this era the great parliamentary history of Ireland begins, and is terminated after half a century by the Union: a period fruitful of splendid eloquence, and of ardent, though not always uncompromising, patriotism, but which, of course, is beyond the limits prescribed to these pages.

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